Dan'l G. Judge Dion

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~278~~ 65

THE PROPELLER COLORADO, CHARLES ENSIGN AND GEORGE W. HOLT, CLAIMANTS, APPELLANTS,

vs.

ELON W. HUDSON, OWNER OF THE BARK H. P. BRIDGE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 18, 1873.

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1 In admiralty.

To the judges of the district court for the eastern district of Michigan:

The libel of Elon W. Hudson, of the city of Detroit, in the State of Michigan, against the propeller Colorado and Julius W. Brett, who is or lately was master, her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, and thereupon the said libellant does allege and propound as follows:

First. That your libellant at the time when the cause of action hereinafter stated arose was the owner of the barque H. P. Bridge, which said barque, as well as the aforesaid Colorado, were vessels of twenty tons burthen and upwards, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States and Territories, upon the lakes and navigable waters connecting said lakes, within the true meaning and intent of the act of Congress.

Second. That, on the 11th day of May, A. D. 1869, the said barque
2 H. P. Bridge, being then and also at the time of the collision hereinafter mentioned tight, staunch, strong, and in every respect well manned, tackled, apparelled, and appointed, and having the usual and necessary complement of officers and men stationed at their proper posts and upon the lookout for the protection and safety of said vessel, was bound on a voyage from Milwaukie, in the State of Wisconsin, to Detroit in the State of Michigan, and Buffalo, in the State of New York, laden with about 30,535 bushels of oats and 65,000 of Milwaukie brick; that about 11 p. m. of said 11th of May, the said barque H. P. Bridge was on the waters of Lake Huron, and to the southward and eastward of Thunder Bay Island; that she had her signal-lights properly displayed and brightly burning; that the wind was then from the southward and the weather somewhat foggy, but not so but that signal-lights could be seen at some distance; that on account of the fog the said barque had taken in and furled all the light sails and foresail, and was proceeding under easy canvass and at half speed, sailing by the wind on the starboard tack close hauled, and keeping her fog-horn blowing,
3 heading about S. E. by E.; that while so sailing the whistle of an approaching steamer was heard, which proved to be the whistle of the said Colorado, apparently on the starboard bow. The barque kept her fog-horn blowing, and, some time before the collision hereinafter mentioned, first the head-light and then the colored signal-light of said propeller were seen off the starboard bow. The propeller was still rapidly approaching, and the fog-horn of the barque was blown again and again, and the bell on the barque, which can be heard two or three miles, was rung violently to attract the attention and warn the propeller, and as she came nearer she was hailed to keep clear. But the propeller with great speed and violence came on and struck the starboard side of the barque near her mainmast at nearly a right angle, and so great was her speed that she cut through all the timbers of the barque and into her side for about the distance of ten feet or over, and therefore said barque filled with water and sunk; and libellant claims that
4 said propeller was not properly manned; that her officers and crew were not at their proper places, and vigilantly and carefully employed in keeping watch and ward for the safe navigation of said propeller; that she was proceeding at too great speed; had not the proper lookout properly stationed, and did not take timely and sufficient

precautions to avoid and steer clear of said barque, as they were bound to do; that from the time the whistle of said propeller was heard, and before and up to the time of collision, the barque was kept steadily on her course, and that everything required by good seamanship to be done on the part of the barque H. P. Bridge, her officers and crew, to avoid said collision was done; that said barque was guilty of no fault, carelessness, negligence, or bad seamanship.

Third. That the freight on board of the said barque then pending, to which she would be entitled to on the completion of the said voyage, was the sum of two thousand ($2,000) dollars, as near as libellant can state the same, which became and is a total loss to libellant.

Fourth. That the said 65,000 of brick were of about the value of $1,625, which said brick were in the custody of libellant as a com-
5 mon carrier, and became and are a total loss.

Fifth. That the said barque H. P. Bridge was of about the value of dollars, and became and is a total loss to said libellant.

Sixth. That the total of said damages, amounting in all to the sum of $ dollars, and interest from date of said collision, for which your libellant claims to have a lien upon said propeller Colorado enforceable in this honorable court.

Seventh. That the aforesaid collision was occasioned solely by the negligence, unskillfullness, and carelessness of the persons navigating the said propeller Colorado, and not by or through any fault, negligence, or improper conduct on the part of your libellant's said vessel, her master, or crew.

Eighth. That, since the aforesaid collision, your libellant has applied in a friendly manner to the owners of the said propeller, and requested them to settle for the damages sustained by your libellant as above mentioned, but the said owners have refused to pay the same or any part thereof.

6 Ninth. That all and singular the premises are true, and that the said is now lying at the port of in the district aforesaid.

Wherefore your libellant prays that process in due form of law, according to the course and practice of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said Colorado, her boats, tackle, apparel, and furniture, and that all persons having interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court will be pleased to decree the payment of the damages aforesaid with costs, and that the said vessel may be condemned and sold to pay the same; and that your libellant may have such other and further relief as in law and justice they are entitled to receive.

Be it remembered that on this day of , A. D. 1869, before me at Detroit, personally appeared the within-named E. W. Hudson, and made solemn oath that he has heard read the foregoing libel and
7 knows the contents thereof, and that the same is true according to his best knowledge, information, and belief.

8 In admiralty.

DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Michigan, ss:

On this day of May, in the year of our Lord one thousand eight hundred and sixty-nine, before me, William D. Wilkins, a commissioner duly appointed and empowered to take acknowledgements of bail, affi-

davits, and depositions, etc., within the district of Michigan, in the matter of the libel and claim of Elon W. Hudson, owner of the barque H. P. Bridge, her boats, &c., against the propeller Colorado, her boats, tackle, &c., in a cause of collision, civil and maritime, moved and prosecuted in the district court of the United States for the district aforesaid; which day personally appeared George W. Holt, as claimant of the said propeller Colorado, & her engine, boats, &c., and produced for sureties, John Pridgeon and Edmund Trowbridge, of Detroit, in said district, and the said George W. Holt and John Pridgeon and Edmund Trowbridge, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of forty-five thousand ($45,000) dollars unto the said Elon W. Hudson, that
9 the said George W. Holt shall abide and answer the decree of the said court in the aforesaid cause; and unless he shall so do they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wherever the same may be found, to the value of the sum above mentioned.

GEO. W. HOLT.

Taken and acknowledged day of May, A. D. 1869, before me.
WM. D. WILKINS,
U. S. Commissioner 6th Circuit and Eastern District of Michigan.

EASTERN DISTRICT OF MICHIGAN, *ss:*

For the purpose of the suit referred to in the above bond, it is now stipulated and agreed by and between us, as parties thereto, that the amount of the bond in the cause above named and above referred to, shall be the sum of forty-five thousand dollars.

Dated Detroit, May 1869.

10 EASTERN DISTRICT OF MICHIGAN, *ss:*

Appeared personally, John Pridgeon and Edmund Trowbridge, both of Detroit, Michigan, and made oath that they are each worth the sum of forty-five thousand dollars of lawful money of the United States of America, after payment of their just debts, in real estate subject to execution within the eastern district of Michigan.

On the day of May, A. D. 1869, the said John Pridgeon *Pridgeon* and Edmund Trowbridge were sworn to the truth of the above attestation before me, Wm. D. Wilkins, U. S. commissioner 6th circuit and eastern district of Michigan.

Taken, acknowledged, and filed May , 1869.
WM. D. WILKINS,
Dist. Clerk.

11 In admiralty.

DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Michigan, ss:

On this second day of June, in the year of our Lord one thousand eight hundred and sixty-nine, before Wm. D. Wilkins, a commissioner duly appointed and empowered to take acknowledgements of bail, affidavits, and depositions, etc., within the district of Michigan, in the

matter of the libel and claim of Elon W. Hudson, owner of the barque H. P. Bridge, libellant, against the propeller Colorado, or her engine, boats, tackle, &c., in a cause of collision, civil and maritime, moved and prosecuted in the district court of the United States for the district aforesaid.

Which day personally appeared George W. Holt, as claimant of the said propeller Colorado, her engine, boats, &c., and produced for sureties Edmund Trowbridge and John Pridgeon, of Detroit, in said district; and the said George W. Holt, and Edmund Trowbridge, and John Pridgeon, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of forty-five thousand ($45,000) dollars, unto the said Elon W. Hudson, libellant, that the said George W. Holt, claimant, shall
12 abide and answer the decree of the said court in the aforesaid cause, and, unless he shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattles, lands and tenements, wherever the same may be found, to the value of the sum above mentioned.

GEORGE W. HOLT.
E. TROWBRIDGE.
JOHN PRIDGEON.

Taken and acknowledged this second day of June, A. D. 1869, before me.

WM. D. WILKINS,
U. S. Commissioner 6th Circuit and Eastern District of Michigan.

EASTERN DISTRICT OF MICHIGAN, *ss:*

For the purposes of the suit referred to in the above bond, it is now stipulated and agreed by and between us, as parties thereto, that the cash value of the said propeller Colorado above referred to is the sum of forty-five thousand dollars.

Dated Detroit, June 2nd, 1869.

13 EASTERN DISTRICT OF MICHIGAN, *ss:*

Appeared personally , of , and , of , and made oath that they are each worth the sum of forty-five thousand dollars of lawful money of the United States of America, after payment of their just debts, in real estate subject to execution within the eastern district of Michigan.

On the day of June, A. D. 1869, the said , and were sworn to the truth of the above attestation before me.

WM. D. WILKINS,
U. S. Commissioner 6th Circuit and Eastern District of Michigan.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I do hereby approve of the within bond and of the sureties therein named as sufficient.

Given under my hand at Detroit, in said district, this day of June, 1869.

U. S. District Judge, Michigan.

Filed June, 1869.

WM. D. WILKINS, *Clerk.*

14 In admiralty.

UNITED STATES DISTRICT COURT,
Eastern District of Michigan:

To the honorable Ross Wilkins, district judge, &c., &c.:

The answer of Charles Ensign and George W. Holt, claimants and owners, and of Julius W. Brett, master of the propeller Colorado, her tackle, apparel, and furniture, respondents to the libel of Elon W. Hudson, against the said propeller Colorado, her tackle, &c.; and hereupon the said respondents answer and allege as follows:

First. The said respondents admit that the propeller Colorado, in said libel named, at the time in the first article of said libel mentioned, was of the tonnage, and was enrolled and licensed and employed as is in said article alleged, and that the barque in said article mentioned was of the tonnage and employed as is therein alleged. The respondents are ignorant of and as to the other matters in said article alleged,
15 and thereupon deny each allegation in said article contained not herein admitted, and demand proof thereof.

Second. The respondents admit that, at the time in that respect alleged in the second article of the said libel, the barque H. P. Bridge therein mentioned was in the waters of Lake Huron, and that a collision took place upon the waters of the said lake between the said propeller and the said barque. The respondents deny that the said propeller rapidly approached said barque at any time in said article referred to, and they deny that the said propeller at any time in said article stated, came on or struck the said barque with great speed or violence or cut through the plank, timber, or ceiling of the barque or into the deck of the barque any distance. The said respondents further deny that the said propeller was not at the time in that respect in said article referred to properly manned and navigated, and deny that her officers and men were incompetent, unskillful, or insufficient; and they
16 deny that said officers and men were not at their proper places or vigilantly and carefully employed in keeping watch and ward for the safe navigation of the propeller; and the said respondents allege that the said propeller at said times was well and properly manned and navigated; that her officers and men at said times were competent, skillful, and sufficient, and were at their proper places and vigilantly and carefully employed in and about the management and navigation of the propeller.

The said respondents deny that the said propeller was at the time in that respect in said article alleged proceeding at too great speed; and they deny that she had not a proper lookout, properly stationed; and they deny that the said propeller did not take timely and sufficient precaution to avoid and steer clear of the said barque.

The respondents deny that, at the time in that respect in said libel mentioned, every act and thing by good seamanship required to be done on the part of the barque, her officers and crew, was done; and they
17 deny that the officers and crew of the said barque were not guilty of any fault, carelessness, negligence, unskillfulness, or bad seamanship in the premises.

The said respondents say that many things in the said second article of said libel are therein untruely alleged and pleaded, and the respondents are ignorant of and as to each of the allegations in said libel contained, not herein expressly stated, admitted, or denied; and the said respondents deny each allegation in the said article contained incon-

sistent with this answer, and demand proof of each allegation in the sai
article contained not in this answer expressly admitted to be true; an
admit and allege that, heretofore, and on the 11th day of May, 1869, the said
propeller, she then being tight, strong, and in every respect well manned,
apparelled, and provided, and entirely sea-worthy, was upon Lake Huron,
having on board a cargo of merchandize and bound upon a voyage
from Buffalo, in the State of New York, to Chicago, in the State of Illi-
nois, and remained and was so tight, strong, and in every respect well
18 manned, apparelled, and provided, and entirely sea-worthy, down
to and at the time of the collision hereinafter stated; and at said
time of said collision and for a long time before that time had
good and proper lookout properly stationed and on duty, which duty
was well and vigilantly performed; and had and carried and exhibited
good and sufficient signal-lights, properly fixed and constructed, brightly
burning and according to law and the statute in such case made and
provided; that at the time of the said collision, and for a long time be-
fore then, John B. Hall, the mate of the said propeller, was on deck,
and the officer of the deck, Benjamin Walsh, was at the wheel, James
M. Armstrong on lookout, and Adam Haig, the first engineer, was in
charge of and working the engines; that, at about eleven o'clock
of the night of the said 11th day of May, 1869, the said propeller
when so on Lake Huron was upon a course north north-west, and
was proceeding at her usual and ordinary speed of about nine miles
an hour; that, at about the time last mentioned it became foggy upon
19 the lake where said propeller was, and the speed of the pro-
peller was at once slackened, and she thereafter proceeded
at a moderate speed, and at a very slow rate of speed; and there-
after and while in said fog the fog-signal of the propeller, the said
propeller then carrying a proper fog-signal, that is to say, a steam-
whistle placed and in all respects according to law, was properly sounded
and used according to law, and at least as often, and oftener than every
five minutes; that while so proceeding, and at such moderate and slow
rate of speed, and so sounding and using said fog-signal, and when the
mate of the propeller was upon the hurricane-deck, in front of the
pilot-house, and the lookout was forward upon the promenade-deck,
and Walsch was at the wheel, and each occupying proper place, and
where each had been for a considerable space of time, and each was
and so had been, vigilantly employed, each in his proper duty, the sound
of a horn was heard on board the propeller, (she then being on her
20 aforesaid course, and the fog continuing,) the sound of which
horn appeared to proceed from ahead of the propeller; that
thereupon the mate of the propeller ordered her wheel aport,
and both the engines of the propeller were stopped; that very soon af-
ter this order was given the sound of the horn was again heard on board
the propeller, the said horn sounding two blasts, and such sound ap-
pearing to sound from ahead of the propeller; that the order was then
given and obeyed on the said propeller to starboard her wheel, and the
port engine of the propeller was backed; that thereafter the sound of
the horn in two blasts was again heard upon the propeller, still ahead;
whereupon the starboard engine of the propeller was backed, and soon
afterwards the propeller and the barque came in collision, both engines
of the propeller backing at the time, the propeller striking the barque
upon her starboard side; that by such collision great damage was done
to the propeller.

The said respondents allege that the said collision happened without any fault or negligence or want of care or want of skill on the part of

Filed June, 1869.

the said propeller or any of her officers or crew; and they allege
21 that the same was caused, (if any fault existed upon the part of either vessel,) from the fact that, as appears from the said libel, the fog-signal of the propeller being heard on the said barque, and both vessels being in a fog, the said barque might have avoided and have kept out of the way of the said propeller, which she did not do, or from the fact that the said barque had not proper lookout, or did not have a proper fog-signal, or did not properly use and sound the same, or from the fact that the said barque was (as in fact she was) at and before the time of the collision unseaworthy, overloaded, and unmanageable. The said respondents allege, however, that they are ignorant of and as to what was done on board the barque, but expressly charge, as aforesaid, that if any fault existed upon the part of either vessel, such fault was on the part of the barque, her officers and crew.

Third. The respondents are ignorant as to the matters alleged in the third article of the said libel. They therefore deny each and every allegation in the said third article contained, and demand proof thereof.

22 Fourth. The respondents are ignorant as to the matters alleged in the fourth article of the said libel. They therefore deny each and every allegation in the said fourth article contained, and demand proof thereof.

Fifth. The respondents are ignorant as to the matters alleged in the fifth article of the said libel. They therefore deny each and every allegation in the said fifth article contained, and demand proof thereof.

Sixth. The respondents are ignorant as to the matters alleged in the sixth article of the said libel. They therefore deny each and every allegation in the said sixth article contained, and demand proof thereof.

Seventh. The said respondents deny each and every allegation in the seventh article of the said libel contained.

Eighth. The respondents admit that the libellant, since said collision, has applied to the owners of the said propeller for the payment of damages alleged by him to have been sustained by the said collision,
23 which damages the said owners have refused to pay. The respondents deny each and every allegation in the eighth article of the said libel contained, not herein expressly admitted to be true.

Ninth. The respondents deny that all and singular the premises in the ninth article of said bill referred to are true, and say that many things are untruly alleged and pleaded in said libel. As to whether the premises are within the admiralty or maritime jurisdiction of this court, the said respondents submit that question to this court.

Tenth. The said respondents further allege that by the said collision the said propeller was greatly injured, and caused to leak badly, and that her officers and crew then and there thought, and had good and sufficient reason to think, that the said propeller then and there, by reason of said damage, was in great danger of sinking and being lost, and that the services of all the officers and crew were and would be required for her own preservation, except in so far as such services were
24 offered to the said barque, her officers and crew. That the officers and crew of the said barque at once, upon the happening of the said collision, abandoned, and improperly abandoned, the said barque, and came on board of the said propeller; that the said barque, was at the time of the said collision, and before then, unseaworthy, overloaded, and unmanageable; that the said barque lay near the said propeller, and so that her officers and crew could have returned on board of her for the space of about an hour after the said collision; that the officers of the propeller offered a line to the officers and crew of said barque,

and to make the same fast to the propeller, and to give the aid of the said propeller, her officers, and crew, for the purpose of saving said barque and her cargo from loss; that the said officers and crew of the said barque neglected and refused to return to said barque, and neglected and refused to take any steps to save the said barque and her cargo from loss; and that by reason of such abandonment of the said barque by her officers and crew, and their aforesaid refusal and
25 neglect, and by reason of the said barque being, as aforesaid, unseaworthy, overloaded, and unmanageable, and by reason of fault hereinbefore charged on the part of said barque, and not by reason of any fault, negligence, or any other matter in said libel alleged upon the part of the said propeller, her officers or crew, said barque and her cargo were lost, as the said respondents are informed and believe.

And thereupon the said respondents pray that the said libel may be dismissed, that the said respondents may have decree for their costs and disbursements in this action, and such further and other, or further or other, decree or relief in the premises as they may be entitled to.

CHARLES ENSIGN.
GEORGE W. HOLT,
By CHARLES ENSIGN.
By JULIUS W. BRETT,
By CHARLES ENSIGN.

MOORE & GRIFFIN,
Claimant's Proctor.
GEORGE B. HIBBARD,
Advocate.

26 NORTHERN DISTRICT OF NEW YORK,
City of Buffalo, to wit:

On this 27th day of August, 1869, personally appeared before me Charles Ensign, one of the respondents named in the foregoing answer, and made oath that he had heard read the foregoing answer, and knew the contents thereof, and that the same is true according to the best of his knowledge and belief.

G. F. MIATT,
Notary Public for Erie County, N. Y.

Filed Sept. 7th, 1869.

WM. D. WILKINS,
Dist. Clerk.

27 UNITED STATES OF AMERICA,
Eastern District of Michigan:

Be it remembered that, on the twenty-ninth day of March, in the year one thousand eight hundred and seventy, I, William D. Wilkins, a commissioner duly appointed by the circuit court of the United States for the eastern district of Michigan, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the acts of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear at my office, in the

city of Detroit, in the eastern district of Michigan aforesaid, Isaac D. Stedman, to testify and the truth to say on the part and behalf of
28 the libellant, Elon W. Hudson, Detroit, a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the eastern district of Michigan, at Detroit, in the State of Michigan, wherein Elon W. Hudson was libellant and the propeller Colorado was defendant.

And the said ISAAC D. STEDMAN, being about the age of 48 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, I did carefully examine the said Isaac D. Stedman, and he did thereupon depose, testify, and say as follows, viz:

I live in Chicago, Illinois; am a mariner by occupation; have sailed 31 years—5 years as mate and 16 years as master; have sailed all the time on the lakes except two years upon the ocean; have had underwriters' certificates to my capacity; in May, 1869, was master of the barque H. P. Bridge, owned by libellant. Hudson hired me, and the papers stated him to be the owner; recollect collision with the Colorado; was on a voyage from Chicago to Buffalo. It was the first trip
29 of the season; left Chicago May 3d without cargo; reached Racine same day, and took on part of cargo of oats; left Racine on the morning of the 4th, and reached Milwaukee between 4 and 5 in the afternoon; took on board the balance of the cargo of oats, in all 30,500 bushels, or thereabouts; also took on 65,000 bricks; brick consigned to Detroit, oats to Buffalo; left Milwaukie on the morning of the 7th. Ned McCullum was first mate. He was a competent man. George Stedman was second mate. He was also competent. The barque was in good condition—first-class in every respect. She measured 425 , and was five years old. I think her length was 167 feet. The crew were good men. There were no ordinary seamen among them. They were all able seamen. The weather was good, and winds light from Milwaukie to Thunder Bay. The collision occur'ed on the night of the 11th of May, 1869, between the hours of 11 and 12 at night, I will say in the middle of Saginaw Bay, about 25 or 30 miles southeast of Thunder Bay light. The wind was south that evening—fresh breeze star-
30 board-watch, (the captain's;) went on watch at 8 o'clock. In the afternoon previous, for about 4 hours, we steered our course south and south-by-west. We were by the wind, and kept our course as near as we could. The wind was W. S. W. from 1 to 5. From 5 to 9 o'clock it was varying, with rain-squalls from southwest to south, and at 9 o'clock it set in south. At 10 o'clock it set in thick. From 10 o'clock until the collision it was thick. At times it would rain and clear off, so that you could see a mile from 10 to 11, but at 11 o'clock it shut in, and there was no let-up after that. Daniel McKeown was at the wheel. McKeown was a good man, an able seaman. He always steered a good trick at the wheel. From 10 to the collision, Lincoln Erskine was our lookout. He was a competent man. He was stationed on the top-gallant forecastle, between the knightheads and the capstan. We carried good lights—the usual lights: red light on the port, green on the starboard. When I came on deck we were steering (at eight o'clock) heading about S. W. by W., on the port track. Staid that way until a little after 9 o'clock.
31 going at 6 to 7 miles an hour. Shortly after 9 o'clock we went about on the starboard tack to avoid a collision with another vessel. We then headed S. E. by E. ½ E. Kept so until the collision

occurred. I never altered it. We were going, after we took the light sails off, at 10 o'clock, at about 4 or 5 miles. Commenced to take on the light sails after 10 o'clock; because the weather didn't suit me; it was getting thick, and I wanted to have the vessel so that I could handle her. From that time until the collision I carried 3 jibs, the foretopsail, main-staysail, mainsail and mizzens up to about ½ an hour before the collision. I carried the foresail. Being in a fleet of vessels, I hauled up the foresail so that I could avoid collision; go about if I met a vessel. Besides the wheelsman, myself, & the lookout there was on deck from ten o'clock up to the time of the collision Patrick Nolan, seaman, and George Stedman, 2nd mate; commenced blowing our horn in the
32 neighborhood of 10 o'clock. I heard one other horn on my starboard beams about 1 mile off, I should think, somewhere in the neighborhood of 11 o'clock—a little before or a little after I first heard propeller whistles. From the sound of her whistle I should judge she was two points on my starboard bow. At that hour we were going through the water somewhere in the neighborhood of 4 or 5 miles. When I first heard the whistle I watched it; tried to keep track of it. I was by the man at the wheel, where I could see into the compass at that time. Vessel was then heading S. E. by E. Nolan and Stedman were hauling up the foresail about the time we first heard the propeller's whistle. Heard that whistle eight times. When we found it coming close to us we sounded our horn a little oftener than we had been doing. Two blasts of the horn were sounded by us at intervals. As the propeller came clearer we sounded more frequently. The propeller answered my horn three times. I think there was an interval of one minute or so between each sounding. The propeller appeared to be approaching. Certainly the signals from the propeller were an-
33 swered; at least I took it to be such, just as much as one man answering another. I noticed that our lights were burning well. That day there was extraordinary care taken of the lights. That day me and the cook took every pane of glass out of the lamps, and cleaned them; in the forenoon; we put the panes back again.

Qu's. What passed between you and the 2nd mate; anything about the propeller coming down?

(Objected to.)

Ans. He sa*e*d the lights first, and reported to me that he could see both the side lights.

Ques. Who made her mast-head light first?

Ans. I did; from underneath our mizzen cross-trees.

Ques. What were you up on the mizzen cross-trees for?

Ans. To see if I could get the position of the propeller any better from up there I could on deck. I couldn't tell how long it was before the collision; it might have been probably 3 minutes before the collision that I saw her mast-head light from the mizzen rigging. At that time saw no other light. Her light then bore, as near as I can judge, four points off my starboard bow; seemed to be quite a distance off
34 from where I was. I couldn't tell how far she was off. Saw it as soon as I got aloft. Just as I got on the cross-bars she blew her whistle and gave me her location, so that I knew where to look for her. From the time we heard the propeller whistle there had been no change in our course. There was no change made up to the time of the collision. When I saw the mast-head light, I came down on deck about as soon as I could conveniently; went forward at once right from the mizzen rigging; after I got forward, and was walking back again, then I saw both the lights of the propeller, when I was about in the middle of the vessel

coming aft. When I was forward I guess I told the man that was on the top-gallant forecastle to ring the bell. I cannot say for certain. When I was forward my son was in the middle of her, and he said, "Father, she is coming right into us. I can see both her lights."

(Statements of what the boy said objected to by proctor for claimant.)

I turns round and go to where my son was standing, and I saw both her lights then. I hailed to them to back her as well as sound' the horn.

There was no reply that I heard from the propeller. As near
35 as I can judge, she was six hundred feet off that time that I hollered to back her, and bearing coming into me at right angles, as near as I can describe it. She struck us forward off the main-rigging, on the starboard side. She appeared to be going about 5 miles an hour. I couldn't tell whether she was backing or going ahead.

Ques. Any orders given that you could hear on either vessel, from the time you made the colored lights until the collision?

Ans. I did not hear any.

Ques. How did she strike you; at what angle?

Ans. I should say, right angles. I don't know much about your angles, but she came stern into us.

Ques. State whether she struck you square or canting to one side.

Ans. Square; her stern penetrated the Bridge thirteen feet nine inches, by measurement. Measured her in Chicago shortly after the collision, on the next trip; Bernhard Carlin was with me when I measured her.

Ques. How did you measure her; by what marks could you tell?

Ans. By fresh, green paint left from the Bridge. The Bridge was
36 painted green; rail, plank, sheer, and bottom white; between, newly painted. We measured on the port side, being the outside of the deck of the propeller, with a tape-line. The green paint extended on the starboard side about the same distance. I also know by seeing her stern alongside the mainmast. When she struck I was standing between the main & mizzen rigging. When she struck I wasn't standing at all, because the collision knocked me down. When I got up I looked to find out where the crew was, and gave orders to get the boat down. The crew went aboard the propeller, and got there before she got away. Part of them went up the main rigging and stepped on the decks of the propeller. Others went on by her anchor-stocks. I didn't see any one on the anchor-stocks, but I could hear them talking. The vessels were together, I should say, as much as five minutes. After they parted, myself and the two mates remained on the barque.

I got off with the boat astern of our vessel; after we left the
37 barque we saw the oats, which was part of the cargo, floating on the water. They came from the hole that was made by the propeller; there was no other outlet for them. Got on the after-gangway of the propeller with a line. One of my crew, Patrick Nolan, threw me the line.

Ques. State what efforts were made by the crew or officers of the propeller to save those on the Bridge.

Ans. There was no effort made at all, to my knowledge. I heard none; saw none.

Ques. Do you know whether any application was made for aid or assistance?

(Objected to.)

Ans. There was; made application myself for a line; they couldn't find one, was their answer, and that answer came from one of my men that was aboard the propellor. I didn't hear any answer from the propeller's

crew. When I got on board the propeller I went straight to the captain, and asked him to run her up to the Bridge, that we might save our clothes. He said he would. He undertook to do so, but couldn't find the vessel. I saw her lights once, and once only, from the propeller's pilot-house; that was, you understand, while we were working
38 up, looking for her. Couldn't tell whether the vessel sunk.

All we know is that we lost her lights all at once. When I saw the lights from the pilot-house, as I stated, she might be from 3 to 4 hundred feet off. After we got to the propeller we called for a rope to hang on with but none was thrown; we then dropped the boat back to the gangway and found Nolan, who had a rope for us. I say this in explanation of an apparent discrepancy in my former statement as to not getting a line.

Ques. State whether you had any conversation afterwards with Mr. Hall, mate of the propeller, and if so, what was it?

(Objected to.)

Ans. I had; I asked him if he had a watch on deck, and who was on deck. He told me that he had the watch, and that there was no one else except the man on the lookout and the man at the wheel. I had a conversation with the lookout of the propeller next day. I have forgotten his name.

(Statements of lookout taken, subject to objection.)

In passing through the straits, while walking the forecastle-
39 deck with him alone, he *he* asked me several questions regarding the landmarks and shoals thereabout. I told him that he ought to know the landmarks and the shoals better than me, passing them so much oftener than I did. He said that he didn't, for that was his first trip on that boat; and that surprised me. I said, "Ain't you posted here?" He said, "No." Says I, "Did you understand my horn last night when I was a blowing of it?" He said he did not. I asked him then, "Did the mate instruct you in regard of it?" He told me he did not, and did not believe the mate knew himself about the horn.

Ques. What time did you pass Thunder Bay light?

Ans. Between the hours of 12 & 1 p. m. on the 11th of May, by about three miles off. I was steering a course S. S. E. with the wind free; came about first time about 4 o'clock. We then headed about W. S. W. and so continued until about 9 o'clock in the evening, when I went about to avoid a collision, or I should have gone further on it. The
40 breadth of beam of our barque was, I think, thirty feet & four inches. At the time of the collision, at 11 o'clock, there was no time that we could not see objects a length ahead. I could see the lookout from, in what I think it was, 10 minutes to eleven when I first heard the propeller's whistle. I went into the cabin after the collision. I marked the time by the clock. It was 20 minutes to 12. I cleared away the boat myself when I left the barque. Up to time of the collision I continued to hear the horn of this other vessel. I could not tell whether the barque was sinking or not when I left her. I did not look to see because my own common sense told me she could not stay up.

Ques. Can you tell why it was she staid afloat as long as she did?

Ans. The buoyancy of the oats composing her cargo. I did not have time to go into my own room to secure any of my clothing.

Ques. State whether or not anything more could have been done than was done by the officers and crew of your vessel to avoid that collision.

Ans. There could not, sir.

41 Cross-examination by William A. Moore, proctor for :

Was born in Harwich, England. At the time of the loss of the

Bridge had sailed her two years, seasons of '67 & '68. Crew numbered ten all told : master, two mates, & cook, & six seamen. Neil McCulley was mate. A man about 40 years of age second mate. My son was twenty-two years of age. McKeown, the man at the wheel, was sailing with me on that occasion for the first time. Erstine was sailing with me for the first time also. Never saw either of them before that trip. Mate may have turn' in 8 or ½ past 8. I didn't keep any particular record of that. After he turned in, the next time I saw him was when he came to me on the boat. From the time I took the deck until 10 o'clock I was knocking all round the vessel, from one end of the vessel to the other. At one time I was by the man at the wheel, and another
42 time by the lookout. The same man kept the lookout, Erskine, from 8 to the time of the collision; but the wheel was relieved at 10 o'clock. McKenney relieved Patrick Nolan. When Nolan was relieved I was walking the house right forward of the wheel. When he was relieved he went forward into the forecastle deck round by the foremast. What he was doing there is more than I can tell. He might have lit his pipe, but I soon set him to work taking in light sails. Nolan, Stedman, and the captain set to work taking in light sails. Erstine did not help. It occupied the whole hour to furl those sails. After Nolan went forward it might have been ten minutes before I went forward. I was letting go the halyards and helping clew them up. I was the captain refer'ed to helping taking in the light sails. I lent them a hand to clew them up, and then sent the man up to furl them. When I was at work taking in the light sail I was in one case on the cabin, again forty feet from it, & again one hundred feet from it. The horn was commenced to be sounded
43 at 10 o'clock or a little afterwards. Lincator Erstine sounded it. No one else. I heard one other horn. The first horn I heard, the whistle of the Colorado, was ten minutes to 11 o'clock. I went and looked at the clock. Two blasts. Next I heard the whistle, was, I shall say, five minutes afterwards; next shortly afterwards, might have been 10 minutes afterwards; next about the same time; till the vessels continued getting nearer together it sounded at about the same intervals, then she sounded oftener. About ½ past 11 she began to sound more frequently. Looked at the clock at that time. At that time the propeller seemed to be about half a mile off, and it bore from 2 to 3 points on our starboard bow. Could not see any of the lights of the propeller; not from the deck. At that time my lookout had not reported any light. My son was the first one that reported any light. That was a very short time after ½ past 11. It might have been 2 or it might have been 3 minutes. The lookout did not report any light at all. At eleven
44 o'clock it was thick, foggy. No rain at eleven o'clock. No moon nor stars visible. The fog was not so dense as I have seen fogs. I have seen fogs denser than it was at 11 o'clock, or yet at 12 o'clock. When I said in my direct examination that we could see a mile off I meant that between 11 o'clock you could see a light a mile off, but after 11 you could see a vessel's length or more anywhere*her*, but I don't think you could see half a mile. We carried our lights in the mizzen-rigging. At the mizzen-rigging the beam of our vessel is less about 2 feet than at the main or fore rigging. Carried our lights in the mizzen-rigging, above the shear-pole. That is above the rail two feet. There were inside screens aft and at the sides. One of them was the Oswego patent light. That was the starboard. The other was the Buffalo large patent light. There were showers of rain between 10 and 11 that night. The officers of the vessel had the charge of the lights; whatever officer had the deck

when they were set. They were set that night on the mate's
45 watch. Had no trouble with the lights. Never knew them to go out in the world. I always make a practice of giving them things my personal attention, and the extra care given that day was because I do so. There was more done to the lights that day than ordinary. The occasion of doing it that day was because I had fine weather, and I had a good chance to do it. At the time we came about, at 9 o'clock, we were about ½ a mile from our vessel. If we had kept on I would have had to keep off to get under his stern. I think that the last order that I gave before the collision was to the man at the wheel to look out and keep a good full into her. That was about the time the propeller was getting pretty close to us. This was at the same time I looked at the clock. It was ½ past 11. The last order given prior to that one was to the man on the lookout to blow the horn. I couldn't say how long it was before the last order; perhaps a couple of minutes. I said the propeller sounded her whistle eight different times. I counted them. Could tell within 1 point or 5 points from the sound of
46 the whistle whether the vessel was over my port or starboard bow. When I saw the propeller with all her lights she was coming on us at right angles. I think when she was two points over our starboard bow I think she was 4 to 5 miles off; I should judge by the sound. I was sworn in the case of Nolan vs. the Colorado.

Ques. When you gave that testimony did you swear as follows: "I don't know how many times the propeller sounded her whistle, as I did not count them; I should think perhaps a dozen times?"

Ans. Yes, I swore that.

Ques. Do you know anything more of the facts about the collision than you did then?

Ans. No; no more than what I've thought of. I have thought it over considerable since then.

Ques. Was the heading of your vessel changed at all from the time you first heard the whistle until the collision?

Ans. It was not, to the best of my knowledge.

Ques. And no other orders were given than those you mention?

Ans. There might have been. I don't remember of any.

47 Ques. How long after the collision that your vessel disappeared?

Ans. I could not tell. I lost my time along with the vessel; have no judgement on the subject. It might probably been half an hour; did not exceed it.

Ques. Did you not swear in the testimony above referred to that it was from half to three-quarters of an hour from the time of the collision until the time the barque finally disappeared?

Ans. Yes.

Ques. Do you know that she sunk at the time you lost sight of her, or only that she floated off in the darkness?

Ans. I do not know; no more than we couldn't find her again; steamed up to where we saw her last, and she wasn't there. It was the time the propeller came up next trip to Chicago that I measured her stern. I then measured the spots of the green paint—the distance from the stem on the port side.

Ques. Where are McKeown and Erskine? Don't you know?

Ans. I do not. Last time I saw Erskine was in September, and
48 I think the last time I *I* saw McKeown was when we arrived at Milwaukie, after the collision; have had no talk with the second mate since.

Re-examined:

Erskine lives in Massachusetts. At the time the sails were being furled; never left the deck until after the collision. All the assistance I rendered was from the deck.

Ques. State whether the sounding of the horn interferes with the duty of a lookout.

(Objected to.)

Ans. It does not.

Ques. State whether it is usual for lookouts to do this in fogs.

(Objected to.)

Ans. Invariably, in all cases.

Ques. Can you state whether or not you did sound the whistles of the propeller? Explain the discrepancy to your statement.

(Objected to.)

Ans. I have counted as many as eight. I have no further explanation.

Ques. If you heard the whistle 2 points off your starboard bow at a distance of 4 or 5 miles, would she not have got past you before the collision?

49 Ans. Well, if she had kept right straight along I suppose she would.

Recross:

Ques. Did you not swear in your examination in Chicago that you went below to light your pipe after you heard the propeller's whistle & before the collision?

Ans. That I could not say.

Ques. If you did so swear, was it true or not?

Ans. I think I lighted my pipe. I went below to fill it. To run down into the cabin and light my pipe I don't consider leaving the deck. I think I lighted my pipe twice during that watch.

S. D. SHERMAN.

Sworn & subscribed before me on March 29th, 1870.

WM. D. WILKINS,
U. S. Commissioner, East. Dist. Mich.

50

51 UNITED STATES OF AMERICA,
Eastern District of Michigan:

I, William D. Wilkins, a commissioner of the U. S. circuit court for the 6th circuit and district aforesaid, duly appointed and empowered to take depositions, etc., in and for said district, under and by virtue of the said several acts of Congress in such case made and provided, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness Isaac D. Stedman, resident at Chicago, Illinois, and more than one hundred miles from Detroit, Michigan, the place where the trial of the cause in which this deposition is taken is appointed by law to be held.

I further certify that his deposition is material & necessary for the libellant in the trial of said cause, and that twenty-four*s* hours' notice of the time & place of taking said deposition was served on Messrs. Moore & Griffin, proctors for the respondents in said cause.

I further certify that on the twenty-ninth day of March, A. D. 1870, I was attended by Henry B. Brown, esqr., one of the libellant' proctors,

52 by William A. Moore, esq., one of respondents' proctors, and by the witness, who was of sound mind and lawful age; and the witness was by me first carefully examined and cautioned, and sworn to testify the whole truth, and the deposition was by Mr. J. J. Koles, my deputy, reduced to writing in presence of said witness and of said proctors, who consented to Mr. Koles so taking the same, and after the same was carefully read by said Koles to the witness he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering it with my own hand to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this twenty-ninth day of March, in the year one thousand eight hundred & seventy.

[SEAL.]

WM. D. WILKINS,
U. S. Comm., East. Dist. of Mich.

53 (Fees taxable on above deposition:) Commr., 61 folios a 20c., $12.20, each, to do. 10c oath, to private affi. & proof 20c., $12.50; witness, 1 day, $1.50, 568 miles at 5c. $28.40, 29.90—$42.40.

54

55 UNITED STATES OF AMERICA, *ss:*

In the district court of the United States for the eastern district of Michigan, in admiralty.

ELON N. HUDSON, OWNER BARK H. P. BRIDGE,
vs.
THE PROPELLER COLORADO & HER ENGINE, boats, &c.

Deposition of DANIEL KINNOM, a witness on behalf of libellant, taken de bene esse at Detroit, Michigan on April 11, 1870, before me, Wm. D. Wilkins, U. S. commissioner, east. dist. of Mich., in presence of H. B. Brown, esq., libellants' proctor, and Wm. A. Moore, esq., claimant's proctor; said claimant's proctor waiving all objection hereto on the ground of irregularity or informality, and saving all objection as to relevancy or competency, consenting that with said objections said deposition may be read & used in evidence in said cause. And the said Daniel Kinnom, being about 30 years of age, and having been by me first carefully examined & cautioned & duly sworn to testify the truth, the whole truth, and nothing but the truth, in the above matter of controversy, did thereupon depose, testify, and say, as follows:

My home is in Canada. I am a sailor. Have sailed five years on the lakes. Last year I sailed on the "Guiding Star" of Oswego, James Garrett, of Chicago, and on the barque H. P. Bridge of Detroit. I shipped on the Bridge before she came out. I remember her collision
56 with the Colorado. I came on deck that evening at about 8 o'clock or a little after, when the watch was called. I took the wheel after 10 o'clock. It was my time at the wheel from 10 to 12 p. m. The Bridge had splendid lights; the best I have ever seen, without any exception; a green and a red light, also a binnacle-light, and a light on the

forecastle. When I went on deck, think she was on the port track, and I think we put her about before the other watch went below. She was on the starboard tack when I took the wheel. From that time until the collision my course was full by the wind; wasn't steady, but kept heading to the southward. From 10 o'clock until about the collision the wind, which had been to the westward, kept working more to the south. From 10 o'clock till the collision we were by the wind; we couldn't keep our course. From the time the wind changed to the southward our course was S. E. by E.; that was my orders, and to keep a good full on her. I observed our captain that evening; he was on deck. I didn't miss him off the deck that watch that I remember of; he was on deck and aloft in the rigging. I remember hearing the whistle of the propeller; cannot tell how many times I heard it as I was not paying attention to it, but was minding my wheel. Beside the captain, the 2nd
57 mate, a man named Nowlin, a sailor, and I were on deck. Don't remember the sailor's name; he was keeping a lookout. Cannot exactly tell what speed we were making; we were not going fast; we might have been making four miles an hour. On our vessel they signalled the propeller by blowing a horn twice at a time; we also rung the bell pretty hard before she struck us. I cannot tell how many times that horn was sounded; cannot tell how long the horn was sounded before I saw the Colorado, as I was minding my wheel and canvass. We were sailing under our foresail, mainsail, mizzen jib, flying jib, and foretop sail. We heard the horns of other vessels; cannot tell how many; there was quite a fleet of us. The first I saw of the propeller was her clear light; just as soon as I saw it, or thereabouts, I saw her whole lights. She was bearing right onto us. When I saw her clear light she was about four points to windward of us.

Ques. From what direction did the whistle appear to proceed before you saw the light?

Ans. It appeared from our weather-bows. I cannot tell how the propeller was heading when I first saw her. I cannot tell what you mean by parallel "stem on" or "at an angle." I know how she did strike
58 us. She struck us stem on our beam. She struck us about the main-chain plates. When she struck I helped our captain to lower away the boat to get into it. I got into the boat; then went back to the barque, and got my bag of clothes, passed it to one of the boys on board of the Colorado, and then went aboard myself. I got into our main rigging, & stepped on her anchor-stock; with the assistance of a line they hove me I got aboard; cannot tell how far up the rigging I got to get on board. I saw the light on the Bridge after I got on the Colorado; can't tell how long it remained in sight. I first went into the prop.'s cabin; was ordered out, & went into the wash-room; stayed there quite a while, & when I came out the Bridge's light was gone. Cannot tell how fast the Colorado appeared to be coming when she struck us.

Quest. How fast; 1, 2, 3, 4, or 5 miles an hour?

Answer. I wouldn't like to say. I heard the hail from the Bridge to the Colorado; the hail was, "To shove the wheel hard astarboard, and back her." I did not hear any reply. I could not tell whether the order was changed.

Ques. Was the signal of the Bridge in answer to that of the propeller, or were they blown indiscriminately?

Answer. I could not tell; we could hear the steam-whistle, &
59 our orders were to blow twice every time we heard the whistle. I did not see the cut, and cannot tell whether she struck square or

canting to one side. Our second mate rang our bell pretty hard just before the collision.

Cross-examined:

Live in Huron County, Canada, Stephen Township. Have sailed five seasons up here, always before the mast. Have wheeled on propellers, but not much. From 8 till 10 that night I was making around the decks. I was aloft some. I relieved Mr. Nolan at the wheel. This sailor-man, whose name I don't know, was on the watch. I heard the captain give him strict orders to bear a good lookout. We had taken in some sail before I went to the wheel, & Nowlan, the second mate, clewed up the fore square sail afterwards, and left it hanging on the gear without furling it. They were not busy at the sails from the time I took the wheel until the collision. The master would stand by me to see how she headed; would sometimes get upon the cabin and sometimes walk to windward. I don't know of his going below to light his pipe; don't know that he smoked. I know, as far as that is concerned, he is a good, careful man with a vessel. I had sailed with him from Chicago to
60 that point.

Quest. That's all the sailing you ever did with him?

Ans. I don't know. I have sailed with a good many. When my watch commenced, at 8 o'clock, our vessel was in Lake Huron. Am sure of that. Can't tell about where on Lake Huron it was, as I have not got any pilot-papers yet, and am not supposed to know. I have no other answer to give than that. Our vessel's course was by the wind when I went on watch.

Quest. Have you any other answer to give than that?

Ans. No, sir. The wind was from the S. W., as near as I could judge, or thereabouts. I went to the compass. I went to haul off the mizzen-sheet. That was after one watch had come on deck. Cannot tell how long after. I am not supposed to know everything. A man before the mast is not supposed to know the time when he does everything. I have no other answer to give. When I went after hauling the mizzen-sheet I can't tell whether it was nearer eight or ten o'clock, as I didn't carry any watch.

Quest. Have you no other answer?

Ans. No; I have no opinion.

Quest. How do you know the heading of the vessel when your watch commenced?

Ansr. Any one is supposed to know the heading of the vessel by looking at the compass.

61 Quest. Which compass did you look at?

Ansr. The one the vessel steers by.

Quest. Where is that?

Ans'r. On board the barque Bridge.

Quest. I ask you again where was the compass you looked at when you went aft to haul the mizzen-sheet?

Ans. It was aft of the cabin, on the binnacle.

Quest. Did you stop there and talk with the man at the wheel?

Ans'r. It is not any of your business whether I did or not.

Quest. Had you any business at the compass?

Ans'r. No; no business that I know of.

Quest. When you first heard the whistle of the Colorado, where was the captain?

Ans. I was watching the vessel; I wasn't watching the captain.

Quest. Where was the lookout?

Ans'r. I could not steer the vessel and look after the lookout.

Quest. You don't know where any of them were on deck, do you?
Ans'r. Yes, sir.
Quest. Any of them standing beside you when you first heard the Colorado's whistle?
Ans'r. Not as I remember of.
Quest. Would not you be likely to remember it if they were?
Ans'r. If it was when we went into Milwaukie I might remember; but it is quite a while since, and I cannot testify.
Quest. Is it your business to look out for whistles?
Ans. No, sir.
Quest. How could you tell which way the whistle was?
62 Ans'r. Because I had ears to hear.
Quest. Could you not, watching for whistles, tell whether a whistle was over the port bow or the starboard bow?
Ans'r. Yes, sir; there is no difficulty in telling whether it was to windward or to leeward.
Quest. How could you tell?
Ans. By the sound of the whistle in my ears.
Quest. How far was the propeller off when you first saw her?
Ans'r. I didn't measure the distance.
Quest. About how far?
Ans'r. I couldn't exactly tell.
Quest. Have you any opinion about it, whether it was one rod or fifty?
Ans. Well, I know it was more than a rod.
Quest. Was it ten rods?
Ans. I didn't measure.
Qu. In your judgement, was it ten rods?
Ans. I think so; according to the best of my belief it was 10 rods.
Qu. Any more than that?
Ans. It might have been, for anything I know.
Ques. Was it fifteen rods off?
Ans. Well, I couldn't swear positively as to how far it was off.
Ques. If you have any judgement about you, tell how far it was off.
Ans. I have some judgment about it. My judgment says it was over ten rods.
Quest. Was it over fifteen?
63 Ans. Well, I didn't measure it, and don't know.
Quest. You say you saw her hull about the same time you saw her bright light; did you see her colored lights at the same time?
Ans. I saw her clear light first, sir; I seen her red light and then seen her hull. That is as good an answer as I can make.
Ques. Did you see her green light at all?
Ans. Yes, sir; I saw her green light.
Quest. How soon after you saw her red light did you see her green?
Ans. Well, I couldn't anyways tell that; it wasn't long.
Quest. What was the last order given you at the wheel?
Answ. The last order the captain gave me was to keep a good full on her, and then when she was heading into us he told me to shove her wheel hard up.
Quest. Did you shove her wheel hard up?
Ans. I forget whether I had it hard up or not when she struck us.
Ques. What is your best impression—whether you had it hard up or not?
Ans. I disremember whether the wheel was hard up or not.

Quest. How far off was the propeller when he told you to put your wheel hard up?

Ans. I didn't measure that distance.

Quest. About how far off do you think she was?

Ans. About the time I was putting my wheel hard up the 2nd mate and the captain were shouting to them to back her up.

64 Quest. Could you see the hull and lights of the propeller at that time?

Answ'r. Yes, sir; I could read the Colorado's name.

Quest. By her lights or yours?

Ans. By her lights; I could read her name as I was putting her wheel hard up as she struck us.

Quest. Where was the captain at that time?

Ans. When he gave me them orders he was standing on top of the cabin.

Quest. Who rang the bell?

Ans. I was aft at the wheel when the bell rung.

Quest. Do you know who rang it?

Ans. I heard the 2nd mate say he rung it.

Quest. Where was the 2nd mate when you had the order to put the wheel hard up?

Ans. I think he was forward.

Quest. Do you know where he was?

Ans. I could hear his voice forward.

Quest. Was the order to put the wheel hard up before or after you heard the bell ring?

Ans. He rung the bell before I had the order to shove the wheel hard up.

Quest. How long before?

Ans. Oh, not over a couple of minutes or so.

Quest. How did the propeller bear when you first saw her?

Ans. I wasn't aboard the propeller until she collided with us; not at that time.

Quest. Have you any other answer to give to that question, sir?

65 Answer. No, sir.

Quest. What kind of a night was it?

Ans. It was quite smooth water.

Quest. Well, sir, a full moon?

Ans. I disremember; if it was a full moon it didn't shine. I didn't see any moon that I remember of; I saw stars; part of the time it was clear; the stars would shine; it wasn't a clear night or a moonlight-night; there was some fog.

Quest. What was you blowing your fog-horn for?

Ans. To let approaching vessels or propellers know the tack we stood in.

Quest. What did you shorten sail for?

Ans. Well, it looked like a windy night; there was quite a breeze aloft.

Quest. Now wasn't it quite a foggy night?

Ans. Part of the time it was, but sometimes it would open out; it wasn't a clear moonlight night.

Quest. How was it from 11 o'clock up to the time of collision, as to being dark or foggy?

Ans. I guess it was pretty thick, if I remember right.

Quest. How much did the wind change while you were at the wheel, in your judgement?

Ans. I don't know as I kept track of that very well.
Quest. You said it was changing from the westward.
Ans. Yes; making to the southward.
Quest. How much did it change from the time you took the wheel up to the collision?
Ans. Well, about two points or thereabouts, as near as I can judge.
66 Quest. What was your heading at the time of the collision?
Ans. We were by the wind, sir; we had been by the wind all the time during my watch.
Quest. Who ordered you out of the propeller's cabin?
Ans. The 2nd mate of the Colorado, I think.
Quest. Have you been sworn about this collision before?
Ans. No, sir.
Quest. Were you ever sworn before in a collision case?
Ans. No, sir.
Quest. But you have been sworn before?
Ans. Yes, sir.
Quest. Often?
Ans. No, sir.

Redirect examination:

The light I spoke of in the forecastle was a light below deck we always had for the watch below; we carried our signal-lights in the mizzen rigging.
Quest. Do you know in what direction you were from Thunder Bay light?
Ans. I don't exactly know; I think we were to the southward of it.
Quest. Were you putting the wheel hard up when the vessel struck?
Ans. I was in the act of putting it up, if I remember right, at the time she struck us.
Quest. How long before the collision did the wind change from westward to southward?
67 Ans. It had been working that way during the most of the time I was at the wheel.
Quest. Did you see the green light of the propeller before you got aboard of the propeller?
Ans. I think I did, sir.
Quest. Where were you standing?
Ans. On the bark Bridge.
Quest. Whereabouts on the bark Bridge?
Ans. I think I was coming out of the forecastle. This was after the collision.

DANIEL M. KINNON.

Sworn & subscribed before me in Detroit, Mich'g'n, on April 11, 1870.
WM. D. WILKINS,
U. S. Comm. Cir. Ct. U. S., 6th Circ't East. Dist. Mich.

68

69 UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I, William D. Wilkins, a commissioner duly appointed by the circuit court of the United States for the sixth circuit and eastern district of Michigan, under and by virtue of the act of Congress entitled "An act

for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in causes pending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of Daniel Kinnom is material and necessary in the cause, the title whereof is in the caption of said deposition named, and pending in the district court of the United States for the eastern district of
70 Michigan, and that the said witness lived at a greater distance than one hundred miles from Detroit, in the State of Michigan, the place of trial of said cause, to wit, at Stephen Township, Huron County, Dominion of Canada, & was a sailor, & about to go on a voyage. I further certify that a notification of the time and place of taking the said deposition, signed by me, was made out and served on the proctor for the respondents, Wm. A. Moore, esqre., to be present on the taking of said deposition, and to put interrogatories if he or they may think fit; and said proctor appeared and consented to the taking of said deposition, waiving all objection thereto on the ground of irregularity or informality, and saving and reserving all objection thereto as to relevancy or competency.

I further certify that, on the eleventh day of April, in the year of our Lord one thousand eight hundred and seventy, I was attended by Henry B. Brown, esqre., proctor for said libellant; by William A. Moore, esqre., proctor for said respondent, and by the witness aforesaid, who
71 was of sound mind and of lawful age, and the witness being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and his deposition being by me reduced to writing in the presence of the witness aforesaid, and from his statements, and after carefully reading the same to the witness, he thereupon subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same, with my own hand, to the court for which the same were taken; and I certify that the same will be retained by me until I shall deliver the same with my own hand to the clerk of the court as aforesaid, at Detroit, Michigan, the place where the said deposition was taken. And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this
72 twelfth day of April, in the year of our Lord one thousand eight hundred and seventy, and *and* the Independence of the United States of America the ninety-fourth.

(Signed) WM. D. WILKINS,
United States Commissioner duly appointed by the Circuit Court of the United States for the Sixth Circuit and Eastern District of Michigan.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I, William D. Wilkins, clerk of the circuit court of the United States for the sixth circuit and eastern district of Michigan, do hereby certify that I am well acquainted with the handwriting of William D. Wilkins, esquire, whose name is subscribed to the annexed deposition, and that

the signature to the same is in his proper handwriting; and I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed under and by virtue of the acts of Congress in such behalf made and provided, by the circuit court of
73 the United States of America for the sixth circuit and eastern district of Michigan.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court at Detroit, in said eastern district of Michigan, this twelfth day of April, in the year of our Lord one thousand eight hundred and seventy.

[L. S.] (Signed) WM. D. WILKINS, *Clerk.*

(Costs taxable on the above depositions:) Commissioner, taking and certifying depositions to file, 43 folio, @ 20 c., $8.60; commissioner, oath to *cret'y* affidavit, proof of service, and to deposition, 3, a 10 c., 30; commissioner, paid for certificate & seal, 50c., 50—$9.40.

(Endorsed:) Filed April 13th, 1870. Wm. D. Wilkins, dep. clerk.

74 [P. A. Hoyne, U. S. Commis'r, & Comm'r for all the States.]

UNITED STATES,
Northern District of Illinois, ss:

Be it remembered that on the thirty-first day of March, A. D. 1870, personally appeared John Henderson, Bernard Carlin, George Steadman, and Neil McCullom, before me, Philip A. Hoyne, a commissioner appointed by the circuit court of the United States in and for the northern district of Illinois, in the eighth circuit, under the laws of the United States, to take affidavits and acknowledgements of bail, &c.; to testify, and in truth to say, on the part and behalf of the libellants in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the eastern district of Michigan, wherein Elon W. Hudson is the libellant, and the Propeller Colorado; and the said witness, being of lawful age, and having been by me first cautioned and to testify the truth, the whole truth, and
75 nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Int. What is your name?

My name is John Henderson. I am 24 years of age. I reside in the city of Chicago, county of Cook & State of Illinois. I am a sailor. I have been so engaged for 7 seasons; 5 seasons on the lakes, and the balance of the time on salt water. I have sailed principally on sails-vessels and some on side-wheel & propeller vessels. During the early part of the season 1869 I was on the H. P. Bridge, a bark. I was on her at the time of the collision with the Colorado. The collision occurred on my watch below. I turned in about half past 8 p. m. I went into the forecastle. There were two (2) other men in my watch; one of them, Joseph Woods; the other, do not remember his name. At the time I turned in, the bark was somewhere on Saginaw Bay. I do not recollect the tack we were then on. The weather was a mild, hazy evening, threatening rain. It was not extra thick. I do not recollect
76 the direction of the wind. I went to sleep. I could not say exactly what awakened me, but suppose it was the sound of the horn and the noise they were making forward on the forecastle. Two distinct blasts were given on the horn as signals. I should judge that I heard 4 or 5 of these signals. I heard the whistle which was supposed to be the propeller whistle. I heard this some 3 or 4 times, which was

answered by the horn. This was in reply to the propeller's whistle. Each signal of the horn was 2 blasts. Afterwards I heard the ringing of our bell. I got out on deck as soon as I could, as this is the signal of danger. When I got on deck I saw the propeller coming stem on to us. She was then, I should think, about 3 lengths of herself from us. This was as far as I could see in the fog. I could have seen the light further, but could not see the hull of the boat further. I do not now remember having any hail at the time she struck us. I was standing about the mainmast on the port side. The propeller struck us
77 about midships forward of the main rigging. Some of the main rigging was stove in. She struck us nearly at a right angle; not hardly a right angle. Her stern was nearer our bow than our stern. She came into the hull, I should judge, some 8 or 10 feet. As near as I could judge, her stern was within 3 or 4 planks of our mainmast. I went up on to the propeller' bow as soon as I possibly could. I got on to our rail, then caught hold of her wale on the port side, then caught hold of her anchor-stock and got up to the next wale; then I caught hold of the anchor-chain and climbed up on to the propeller. The anchor-stock was somewhere from 3 to 4 feet the stern. Noland was the next man that got up after me. I do not know how he got up. I was trying to get a line to put over the propeller's bow when I heard Noland sing out. I reached down my arm to him, as I could not get a line, and with this assistance he got on board. He was at this time
78 standing a little on the starboard bow, coming up the stem. I do not know what he was standing on. The propeller remained in the cut made in the bark, I should judge, some 10 or 15 minutes. I did not see any assistance rendered by any one aboard of the propeller to get any of the crew of the bark on board. I asked one of the crew to help me get a line over, but he complained about his thumb being sore, which proved to be the wheelsman. The two boats of the propeller were aft on deck, secured, one on the starboard and one on the port side. There was no efforts made to lower them; the tackle was not even put on. I tried to see if there was not one of the boats which could be lowered, but they were not handy; the tac'les were not hooked on. The officers of the bark lowered their boat and came round to the after-gangway of the propeller. I heard the noise of the boat in the water, and I run aft and assisted them to get on board. When
79 the propeller backed out from the bark I could not see that she made any particular stop. I could see one green light showing, but all at once it disappeared. After the propeller had given one or two revolutions of the wheels back, she then went forward towards the green light, but the light had then disappeared. As I went aft to help the officers on board, a man came out of the engine-room and I asked him *and I asked him* if the propeller was leaking, and he answered, Not much. It proved to be the engineer that I spoke to.

(The statements of the supposed engineer objected to by counsel for defense.)

The rail of the propeller was, I should judge, about 16 feet above the deck of the bark. I have never seen the bark since I lost sight of her green light. The officers or crew of the propeller made no offers of assistance to the crew of the bark. They did not appear to be doing anything. They were crowded together forward, and seemed to be in confusion. It was only a few seconds after I saw the propeller before she struck us.

80 Cross-examined:

I sailed on board of the brig Saxon for about 6 months in the year

1868; we were trading between the port of Chicago, and Oswego, N. Y. I went one trip afterwards to Manistee, on board the R. J. Sanborn. After the loss of the bark Bridge I sailed on the schooner E. G. Gray; made one trip on her to Muskegon. My watch closed on board the bark at 8 o'clock p. m. Joseph Woods and another man were in my watch, and the mate was officer of the watch. It was not dark when my watch closed; it was not dark when I turned in. I went down into the forecastle, and did not come on deck again. I do not think the stars were shining or the moon; it was hazy, but did rain; it was damp. I do not think that I lay more than 2½ minutes after I woke. I think I was awakened by the horn blowing and the noise forward. When
81 the bell rang I knew there was danger. I was not very long getting up after the bell rang. I got up just as quick as I could; I did not stop to put on any clothing except what I had on when I went to sleep. When I first got up on deck I ran aft to see where the propeller was going to strike us; I was afraid she was going right through us. When I got out on deck, I could see the hull of the propeller, and I saw her mast-head light, but saw no other light. I ran about as far as the main-mast; when I got there the propeller struck us, and I made for the deck of the propeller. I ran somewhere from 70 to 80 feet before the propeller struck the bark. I ran as fast as I could to get to where our boat was. I did not stop to notice who were on our deck as I ran aft, and kept my eye on the propeller all the while to see where she was going to strike us. I did not see any one on our deck when I got up on deck of the propeller. It was foggy, more so than when I turned
82 in; it was a good deal more foggy, for it was only a little hazy when I turned in. I was sworn and gave my testimony in the case of Noland et al. vs. the Colorado touching this same collision.

Question No. 1 X. Did you swear when you gave that testimony as follows: "It was raining and was very hazy when I went below?"

I do not remember swearing to that; I knew that it had been raining before, and was very hazy. If this is written down it is probably a mistake in the writing.

Question No. 2 X. Was not that testimony read over to you, and did you not then sign it?

I do not remember that it was read over to me; it might have been. I do not remember signing that particular. I remember signing the testimony.

Question No. 3 X. Did you swear in that testimony, "After I got on to the propeller the weather was thick, foggy, & murky?"

I do not remember that I swore to that exactly. I do not remember swearing to that question.

Question. Do you say that you did not swear as stated in the two foregoing questions?

83 No; I do not remember swearing. I may have, but I don't remember.

Question. Have you any more knowledge now in regard to this collision than you had when you gave the testimony referred to?

No; I have not as much.

Question. If you made the statements contained in the two questions referred to, were they true or not true?

They were true. It was some 10 or 15 minutes after I got on deck before the vessels got apart. All the crew of the bark except the captain and 2 mates came up on deck of the propeller soon after I got up. The captain and the 2 mates came to the after gangway on the port side of the propeller, and got on board there. The propeller did not

back out immediately after I got on her deck. After I got on deck I went aft to the after gangway to help the officers get on board. I did not do anything else except to look at the boat as I was going
84 aft to see whether she could be lowered. The propeller did not back out until after I had helped to get the officers on board at the gangway. She might have started but had not got any great distance. She had started back when I got back forward. After helping them on board I went directly forward. The couple of turns backward did not take the propeller very far. I do not think she stopped until she went ahead again. When she started ahead again I should think she was about the length of herself from the bark. I could not tell whether the bark sunk then or disappeared in the fog; but I did not see her or her light after the propeller started ahead again.

Question. Did you state in the former testimony which you gave, "After I got on to the propeller I saw a crowd of men on the deck of the propeller who seemed to be doing nothing except looking at the bark?"

Yes. I believe I did. The propeller, when I came on deck,
85 was coming directly onto us, stem on.

(Signed) JOHN HENDERSON.

NEAL MCCOLLUM sworn.

My name is Neal McCollum. My age 42 years. I reside in New Buffalo, in the State of Michigan. I am a seaman. I have sailed, put it all together, in the neighborhood of 25 years. I have sailed as an officer, off and on, for the past 14 years, principally on the lakes. I was on the bark H. P. Bridge during the fore part of 1869, as 1st mate. I had been on her about a month before, fitting her out. This was her first trip that season. Her condition was good. On the trip from Milwaukee to Thunder Bay we had disagreeable weather, foggy and misty, but not heavy. I recollect the night of the collision with the Colorado. I turned in that night about 8.30 p. m. I stopped up about half an hour after my watch was up. I turned into the cabin. I left on deck the second mate. I am not positive whether the captain was on
86 deck when I turned in. I think I did hear him up on deck. I do not recollect who was at the wheel. The 2nd mate was a competent man, and could handle a vessel as well as any one. We had a good crew, all competent men and able seamen. At the time I turned in the bark was about half-way across Saginaw Bay. We were on the starboard tack when I went below. The weather was thick, hazy, and foggy; not much wind; rather light wind. I went to sleep when I went below. I took a nap and woke up again. I heard the noise of the sound of the horn, and I heard the mate sing out. I was about half asleep and half awake. I heard the captain walking on deck, on the top of the cabin. Two distinct blasts were given on the horn as signals. I could not say the exact number these signals that I heard. I heard quite a number, and I heard the ringing of the bell afterwards. I heard the propeller whistle. I think she blew a single blast, but am not positive.

87 Question. State whether the whistle was in answer to the horn or the horn to the whistle, or whether they seemed to be blown without any reference to each other.

Well, it seemed to be in answer to our horn; they seemed to have got the sound of our horn, I should judge.

Question. What other signal from the bark did you hear?

(Objected to.)

I heard the bell; I heard this ring some half a dozen times; I heard no other signal. The captain stamped and called me on the top of the cabin, and having heard the propeller's whistle I got up and went on deck. When I first went on deck I saw the propeller coming right into us; she was about a length off. I did notice any light on her except the mast-head light. At the time she struck the bark I was standing on deck, just abaft the cabin; she struck us a little to the right angle.

Question. Do you mean just at a right angle; if not, which way from a right angle?

I would call it just at a right angle.

88 Question. Which was the greatest distance, the distance from the stern of the propeller to the bow of the bark, or the stern of the propeller to the stern of the bark?

The stern of the propeller to the stern of the bark. The propeller came into the bark; judging from the marks on the propeller of green paint, that she ran into the bark about 7 or 8 feet. She struck the bark forward of the main rigging. I did not notice how far her stern was from the mainmast; it was but a short distance. Our lights shown so that we could see right through from the mainmast to the bow of the propeller. Immediately after the collision the captain gave orders to lower away the boat, which was done by the 2nd mate and myself. I went forward before I lowered the boat. I stood there until the captain gave the order to lower away the boat, as we could not save ourselves any other way. The crew of the bark got on the propeller by climbing onto the rigging. I should judge they climbed up some 10 or 12

89 feet to get onto the propeller; this would bring it some 6 or 7 feet inside of the rail of the bark. The captain got into the boat first, the 2nd mate next, and I got in last. I got onto the propeller after we had run alongside of the *the* propeller, and some of our own men came to the gangway, and assisted us to get on board. After I got onto the propeller I noticed the oats from the bark floating on the water. After I got onto the propeller I went forward and saw the men standing around there on the upper deck. Our men were in conversation with the lookout.

Question. What was the conversation?

(Objected to.)

They asked him if he did not hear our horn. He answered that he did. They then asked him why he did not mind the signals of the horn. He replied that he did not know what they meant.

Question. Did you notice whether the bark appeared to be sinking before you left her?

(Objected to.)

90 Yes, I noticed that she appeared to be down at the head. I could not say how much, but she was very low down in the head. I saw this when I was in the boat. When I went forward on the propeller I saw the lights of the bark, and she seemed to be very low down in the water forward; the fore-yards seemed to be very low down to the water. I saw the starboard or green light; I stood looking at it, and it disappeared all at once. The propeller was stationary at this time. After the light disappeared the propeller drifted from it; she did not work her wheels. I should think that it was only a few minutes after this before the propeller moved forward. I did not see the bark at all after this.

Question. Did you have any conversation with any of the officers or crew of the propeller after this?

(Objected to.)

I had a conversation with the wheelsman in the wash-room, after he got relieved from the wheel the next day.

(Objected to.)

Question. What was that conversation?

91 (Objected to.)

He said he would be damned if he would have jib-boom come into the wheel-house if he could help it.

Question. Did you have any further conversations with any of them?

(Objected to.)

Yes; I had a conversation with the engineer. I asked him why he did not stop the propeller. He said he did, and then he told me before we got to Milwaukee that he went ahead on *our* wheel and backed on the other. At the time I came on deck the foresail was clewed up and topsail was on her—mainsail and mizzensail and jibs. I could not say whether all the jibs were on her or not; part of them were on. All the light sails were off. I heard the captain of the bark hail the propeller. I had just come on deck at the time, or was just coming up out of the cabin. The captain sang out, "You are coming into us." I did not understand whether he gave any order or not.

92 Question. Do you know whether they heard the hail on board of the propeller or not?

No, sir; I could not say.

Question. State whether the wheelsman of the propeller said anything to you about reading a paper.

(Objected to.)

Well, yes; he said that he used to often take a paper in to read at the wheel, as she steered so well. I went into the engine-room of the propeller that same night. No one was there. I do not know where the engineer was. I staid there some 5 minutes or so, looking for a pair of boots that I had thrown on board near the engine-room.

Question. Did you say anything about this to any one, and if so to whom, and what was said?

(Objected to.)

I spoke to the wheelsman about it, and said that it was curious that the engine-room should be vacant in such a fog like this, when there were so many vessels around. He said this was nothing for them,

93 for they would leave the engine-room, and go all over the boat.

Question. Did he say anything to you about the way the propeller was headed at the time of the collision?

(Objected to.)

I do not recollect that he did.

Question. How fast was the propeller running that night?

After she left the vessel I should judge that she was running at the rate of 6 knots an hour.

Question. At the time the propeller started forward, after the collision, did she start towards where the green light was last seen, or not?

I could not say, as I did not see the compass.

Cross-examined:

After I left the Bridge I sailed on the bark Norman, and made two trips to Green Bay; then I left her and went aboard the schooner Driven, and sailed in her the balance of the season. I went in the capacity of

1st mate after I left the Norman. The two trips I made on

94 the Norman I went before the mast. The Driven was engaged in the lumber trade. She is a fore-and-aft-rig schooner; she carried about 145,000 feet in the summer time. I went with her as mate 2½

months, and was captain of her for 2 months in the fall in 1867 and 1868. I was mate of the brig Saxon all the season; we laid her up in September, 1868. On the night of the collision I went to sleep. When I got up I did not stop to put on any clothing. When I got to the deck the propeller was coming right into us, about a length off. The first thing I done after I got on deck I went forward by the mainmast. I had just got to the mainmast when she struck. I do not think that I had got more than about 10 feet forward of the cabin when she struck. The cabin door is about 9 feet from the taffrail. The cabin is about 5 to 6 feet above the main deck; the cabin-door comes right out on deck, at the aft part of the cabin. When I first stepped
95 out of the door of the cabin the propeller seemed to be coming right on to us, stem on. I went forwards on the port side; I went close to the rail. We had boards laid down on the brick to walk on, so as not to break the brick. I heard the horns blow before the captain stamped on the deck; I also heard the bell ring. This was only a short time before she struck. I think it was about 3 minutes before the captain stamped that I heard the bell ring. The captain had hardly finished stamping before I got on deck. I heard the captain hail and sing out, "You are coming into us." I should judge that this was about a minute before he stamped for me to get to the deck. I had to travel about 18 feet; counting in the stairs, some 18 to 20 feet. I was not long going this 18 feet; I stepped pretty lively. I moved some 8 or 10 feet after I came on deck. I stepped first and looked at the propeller, and saw the green light of the bark shining right onto the
96 propeller. I did not notice the captain before the propeller struck us. He got off the cabin just after he stamped. He may have stamped a dozen times for me; I cannot say how many times. I am sure she had not hit the bark before I got onto the deck. There was no moon or stars visible. There was considerable fog, so much so that I do not think the sails of a vessel could be seen more than 15 rods. I did not hear it rain that night; it was a foggy, drizzling, misty night. I think sails on such a night could be seen some 15 rods. There was a kind of a light overhead; I cannot say whether there was any moon or not. One of the men in my watch was Noland, and Henderson; the name of the other man I do not remember. This was their first trip on the boat. I knew Henderson before; I did not know the other two men. The steward was in the cabin with me. I do not know which of us got on deck first, as I went out the cabin-door and he went
97 out the galley. After I got onto the propeller I went forward on the upper deck. The bark was then in sight; I should think we were 20 rods, or 120 feet, from her. The propeller was at this time headed right towards the bark; the propeller had backed away from the bark when I got on board of her. After I got on board of the propeller I went straight up forward. At this time the engine was not working; it was—I should think it was—some 10 or 15 minutes before the propeller started. I could not say which way the propeller moved, as I did not see the compass and had lost sight of the bark. It was after we got started that I went to the engine. I was in the engine-room, or by the door, at the time I was looking for my boots, about 5 minutes; I should think this was about half an hour after the propeller started. I did not see a soul in the engine-room; the engine was working. I went into the engine-room on the port side; I did not sit
98 down nor lie down in the engine-room. I did not know but they might have thrown my boots into the engine-room, and I was looking around there for them. The wheelsman that spoke about read-

ing his paper did not say that he was reading it that night. The engine-room was on the main deck, and opens on both sides. The doors were both open. I had no other reason for stopping at the engine-room except to look for my boots, but I took observations, not seeing any one there. The conversation I had with the wheelsman was in the wash-room, that same night when I got on deck; he had just been relieved; he told me that he was the wheelsman. The collision took place about half way between Thunder Bay light and Point au Boites; the distance between the two points is about 75 miles, and the course is S.SE. I could not say what course we were on; we were heading SE. by
99 east, but on the wind. When I left the deck, I think she was heading *I think she was heading* about SE. by east, and we were carrying what is called starboard tacks aboard, and the sheets were hauled aft on the port side. The vessel would run about in the neighbourhood of 10 points; this is as near as I have ever seen her run. I saw the paint on the bow of the propeller the next day.

Question. Did not the propeller lay a portion of the time after the collision and before the bark sunk, with the same or about the same heading as the bark?

The last I saw of the bark, the propeller was heading straight on to the bark—what we call stern on.

Question. Same question repeated.

I did not notice it.

Redirect resumed:

Question. How long from the time of the collision to the time the propeller started ahead to resume her voyage?

Well, I could not say exactly. I should say some 20 minutes—perhaps 25.

100 How long before she got clear of the bark?

I should not say more than 5 minutes.

Recross:

Question. When you went up on the deck forward, could you see the sails of the vessel as well as the light?

Yes, sir; the propeller was not moving at that time—only drifting. I could not say whether the vessel was drifting or not. I could not say. I was looking at her, and all at once I lost sight of her, and I expected she went down.

Question. Did you see her go down?

I could not say.

Then you could not say whether she drifted away or sunk?

Well, I could not say. At the time I lost sight of her she did not drift away, but must have sunk. There was no wind to drift her away.

Who was standing there with you?

I think this man here—John Henderson—was there, but I am
101 not certain. The 2nd mate was also there; also a man by the name of Noland was there. There was no one else of our own crew there.

Where were you all standing then?

We were standing on the upper deck or the hurricane-deck. Part of us were looking over her bow, about 10 feet from the stern.

What did you mean when I asked you whether you saw her go down, and you said you could not say?

I meant that she must be sinking, as her yards were so low down in water.

Were they listed over?
I could not say.
Do you now mean to swear that you saw her sink?
No, sir. I do not mean to.
(Witness has travelled 65 miles to attend this examination, and two days.)
Will you swear, as to your own knowledge, that she sunk beneath the surface of the water while you were within a half a mile of her?
102 Yes, sir. My idea is, that she sank while I was looking at her, to the best of my knowledge.
Did you see her go beneath the surface of the water?
I could not say.
(Signed) NEAL McCOLLUM.

GEORGE STEADMAN sworn:

My name is George Steadman; my age, 23 years. I reside in the city of Chicago, county of Cook, & State of Illinois. I am a sailor. When I first commenced sailing, I was very young—about 8 years old. I have sailed on and off about 6 years. I have sailed five (5) seasons as officer. I am the son of Capt. Steadman. I have sailed with him the most of the time on and off. I would take a change with him. The forepart of the last season (1869) I was sailing on the bark "H. D. Bridge." I remember the collision with the Colorado. We left Milwaukee on the morning of the 7th of May, 1869. The weather was clear, and a
103 nice breeze of wind; I think the weather was clear until we got through the straits. The condition of the vessel was in good sailing condition. The collision took place during my watch on deck. I came on deck a little before 8 o'clock p. m. I had in my watch a man by the name of Charley, and one by the name of Dan, and one Patrick Noland. From the time I came on deck up to the time of the collision the captain was on the top of the cabin. All the time that I saw, he was on deck all the time. I did not see him go below during the night. He was giving me orders during the night, and I was executing them, so that I could not tell whether he was below or not. Dan was at the wheel. I do not know his name. They called him Dan.

Question. Was he a competent wheelsman?

Yes, sir; Charley (something) was on the lookout; I think his name was Hackett; I think his righ name was not Charley; he had a
104 very hard name to pronounce, and it was hard to get round it. The wind that evening was about south, light. Our course after coming about on the starboard tack was about SE. by east; lights were burning all right; we commenced taking in sail about 9 o'clock p. m. I think it was at the time of the collision we were running under the mizzen, mainsail, main stay-sail, foretop-sail, foretop-mast stay-sail, jib, & flying jib. We had furled the main top-mast stay-sail; was hauled down snug. The top-gallant sail, the foretop-gallant sail, the main and mizzen gaff topsails, the foresail hauled up snug; this vessel had nothing above the top-gallant sail. I ass sted in furling the sails; I suppose that I was aloft that evening over 10 minutes.

Question. Did you notice whether the fog was denser or lighter above than below?

It was lighter at the time I was aloft.
105 Question. Could you see lights when you were aloft?

Yes, sir; I saw two or three, one red light and one which I could not tell whether it was a bright or a green light; they seemed to be about 4 miles, between three and four miles. I did not see the pro-

peller's light when I was aloft to know it. The weather, at the time I took in the sails, was foggy, with mist of rain; light rain. I could not say how long it was before I made the propeller's light. It is so long ago that I have almost forgotten; I should think it was ten minutes, perhaps only 5 minutes, before the collision; we were going, I should judge, about 3 miles an hour, not over that.

Question. State whether there was any change of course from the time you heard the propeller's whistle until the collision.

No, sir; there was not. I heard her whistle before I saw her
106 light; 2 distinct blasts from the fog-horn was given as signals from the bark. We commenced giving these from the time we commenced running on the starboard tack. There was no change of course from the time we commenced on the starboard tack until the collision. The light of the propellers bore, when I first made it, about one point on our weather bow. The horn was blown at very short intervals from the time we made the light. The lookout was stationed on the top-gallant forecastle deck.

Question. Could you tell from the light whether the propeller kept her course?

(Objected to as leading.)

Well, I could tell when she changed her course to point for us. I should think she changed her course like this, (pointing and making a motion with his hands, which was about at a right angle,) although I cannot tell the number of points.

Question. Do you mean at a right angle with her previous course, or at a right angle with the bark?

107 I do not understand the question.

Question. How long was this change of course before the collision?

About 3 or 4 minutes. At the time she changed her course the light bore about one point on the weather-beam—forward. Do you mean I should state the points of the compass? I should say about south. At the time I made her bright light I should judge she was about a quarter of a mile from us. The colored lights were visible. When she changed her course, or immediately after, her bright light was visible, before we saw the lights when she first changed her course.

Question. What other signals were given from the bark?

She rang her bell; afterward some of the men hailed her. The captain of the H. D. Bridge hailed her to back on her, and kept hailing her until the collision. I also hailed him to back on her and to starboard his wheel. She seemed to me to be going over 5 miles. At
108 the time I first made her colored light she seemed to be about 3 or 4 times the propeller's length from us. She struck the bark stem on, about midships of the bark.

Question. How long before or after you made her colored lights did your father hail her to stop, back, & starboard?

Right off, as soon as we made them, and saw that she was coming for us, and kept hailing until she struck us. She did not appear to obey the order. No reply was received to the hail.

Question. State whether, in your opinion, if she had been running at slackened speed and had stopped and backed and starboarded her wheel, whether she would have avoided the collision.

(Objected to.)

Yes, sir; I think she could have avoided at the time she struck us. I was standing or running from forward aft and had just got across the bows of the propeller when she struck. I had been to call the men up.

I was trying to get aft to call the others up, but they had already
109 got up when she struck. The collision knocked me down. The stem came into the hull of the bark, I should say, over 8 feet. The stem of the propeller came within 3 or 4 feet of our main mast. I did not notice how the men got on to the propeller. I went aft and got into the boat. The mate, or some one—I cannot say who it was now—told me to cut her loose. I told him I had no knife; the captain then came and got into the boat, and I jumped out and went to look for the ax to cut her loose. I did not find the ax, and when I got back I found that the boat had been cut loose—a part of it. I helped the captain to cut her loose. He had a knife. We waited and got the mate in and then left her. When we left her she was in a sinking condition. At the time we left the bark the cargo of oats was all around us on the water. We rowed the boat up to the propeller, and stayed there about 5 minutes before we got any assistance to get us aboard. After I got on
110 board I went to the captain of the propeller, and tried to get him to go alongside of the bark again. He said he would, but he did not do it. I saw the bark after I got on to the propeller. I was standing on the bows of the propeller, on the deck, below the pilot-house. I do not know the name of the deck where the lookout was stationed. I saw the green light and the cabin light of the bark. She was about the length of the propeller off from us. The green light bore from the propeller off the starboard bow about 3 points. I watched the light until it disappeared and we lost it. I cannot tell how it disappeared. The propeller started on her course shortly after we lost the Bridge's light. We all went to the wash-room. I never saw the bark after this. From the time of the collision to the time the propeller resumed her course I should think was from half an hour to ¾ of an hour. I heard another horn that same evening. This I heard on our weather quarter. This was faint. This was between 10
111 and 11 o'clock. I did not pay much attention to her horn, as I knew she was going the same way we was. Our bell could be heard, I should think, about 4 miles on a night like that.

Question. State whether you had any conversation with the lookout of the propeller about the bell and the fog-horn.

(Objected to.)

Yes, sir.

Question. When and where?

(Objected to.)

It was forward where he was stationed, that same night.

Question. What was said?

(Objected to.)

I asked him whether he heard our bell and horn. I asked him if he could tell how many blasts of the horn was blown, and he told me that he did not know anything about it. I asked him if the mate had given him any instructions, and he said no. I asked him then, if he did not see our light; he said it was his first trip on the lakes, and he did not know one light from another.

112 Question. Did he say whether he heard the number of blasts at each signal of the horn?

(Objected to.)

Yes, sir; he said that he heard two blasts, but he did not know what it meant.

Question. Did you have any conversation with the wheelsman?

(Objected to.)

Well, I do not know that I had any myself, but I heard him talking

with others. I heard him talking with Noland in the wash-room. I cannot tell exactly when it was, but it was inside of the 4 days, though.

Question. What did he say?

(Objected to.)

I heard him say he would be damned if he was going to have that jib-boom come into the pilot-house on to him. I also heard him say that the mate told him to put the wheel hard astarboard. I could not say whether he said hard astarboard or hard aport. I do not remember which; but he countermanded the order, & told him to put it hard the other way. He said he thought the propeller would have gone
113 clear if he had not shifted the wheel. I heard him say that he often took a paper into the pilot-house to read while he was steering. I heard him say the mate was a good man, and always used him well. He told me that he thought the other wheelsman would kill him before he got to Milwaukee, on account of the captain. He told me that he thought he was watched to be murdered; he also told me of things which transpired there on the boat which he never knew to have happened before. This was after the collision. He told me that one of them was, that the captain was feigning to be asleep in the pilot-house; and he told me that this was why he was afraid on account of the captain being in there.

Question. Did you go to the engine-room that night?

I did. I was there once.

Question. Were you there more than once?

Once is enough.

Question. Who did you find there?

No one was in the engine-room that I could find there, while I
114 was around. I was not there long. I went down there with the mate, looking for a pair of boots of his. I do not know where the engineer was. The propeller was in motion at the time, and going at the rate, I should judge, of over 5 miles. The weather was thick and foggy. I had no talk with the engineer that night; after that I had.

Question. Any conversation with him about the management of the engine previous to the collision?

(Objected to.)

I heard him say that he stopped one engine. I heard him say again that he backed on one engine & went ahead on the other. I think it was that he backed on the port and went ahead on the starboard engine. The mate appeared to manage the vessel that night.

Question. Did the captain appear to be in charge of her while you were on board?

Well, I could not tell that, as I was in the wash-room the most of the time I was on board, I mean. We had nothing to do, and we had
115 to sleep on the floor of the wash-room, and it was a good place to loaf. The mate was in charge of the propeller at the time of the collision.

Question. Did you have any talk with him in regard to the wind, or in regard to your course?

(Objected to.)

Well, I do not recollect now.

Question. Did you have any talk with the wheelsman about the same subject?

(Objected to.)

I had; I heard him say he did not know how he was steering at the time. I heard him say that there was only 3 men on deck of the pro-

peller at the time of the collision, that is, that were where they could see. I asked him who they were, and he said it was the mate, the lookout, and himself. Two blasts of the horn indicate starboard-tack aboard.

Question. When and where was this talk that you had with the engineer?

116 It was in the wash-room, but I cannot tell when; it was inside of the 4 days.

Question. How did the Bridge appear to be sinking when you last saw her?

Down by the *the* head—settling.

Cross-examined:

I was born in Oswego, New York, in the year 1846. I think the last day of October. I sailed on several vessels in 1868; part of the time before the mast, as mate, and as 2nd mate. I sailed on the Bridge 2 weeks as mate. I do not exactly recollect whether I was on her after or not that season; it was in the spring early. The weather from 8 o'clock to 10 during my watch that night was drizzly rain and foggy; from 10 to 11 o'clock it was about the same; from 11 o'clock to the collision it was the same, foggy and raining; the fog and darkness, I cannot say whether it increased or diminished. I commenced taking

117 in the light sails about 9 o'clock; this occupied the time on and off till half-past 11; we took in the last at about half-past 11. It was not a good night to see a light, it was not clear; we shortened sail, so that we could handle the vessel easy if we came across anything else; this was all the reason. The captainwas not helping take in the sail; he was only giving the orders. After 10 o'clock Noland helped me; before 10 o'clock the man that we called Charley and Dan helped me. I was aloft between 9 and 10 o'clock. I was up on the top-gallant yard. I could only see the bright light when I first discovered the propeller. I could not see her colored lights when I first saw her. When I first saw her colored-light I was standing aft the fore rigging on the starboard side. Our lookout was on the top-gallant forecastle-deck; he reported the light of the propeller to the captain. From 11 o'clock to the time of the collision I was on the Bridge's deck. I was all around,

118 keeping a lookout, walking around the deck, forward, midships, and aft, and all over. After 11 o'clock I could not state how many times I was forward. I was forward pretty often. I do not think I was aft more than once or twice after 11 o'clock. I generally stay about midships when the captain is on deck.

Question. What was you forward for?

To see that the men were not asleep. I went aft for nothing particular, except walking and to look at the compass; we had no compass forward.

Question. Do you go aft to look at the compass when the captain is officer of the deck and is on the quarter-deck?

Sometimes, when I walk. There was a window in the forward part of the cabin, where I could look in and see the compass.

Question. What business had you aft in a foggy night if the captain was on deck doing his duty?

119 Well, in the first place, I have as much business aft as I have forward. The captain was officer of the deck and had charge, and I was executing his orders. After 11 o'clock, up to the time of the collision, the captain was aft on the deck and in the rigging. After we made the propeller's light he was in the rigging. He did not send me aft after 11 o'clock.

Question. Did you go aft and see the compass from the time you commenced taking in the light sails until you finished?

Yes.

Question. How many times and what for?

I cannot say how many times I went to look at the compass. At 11 o'clock we were carrying our sails starboard-tacks aboard by the wind; wind was steady and light. The direction of the wind was from the south'ard; the wind was south. I would swear that it was within a point of south. It was south. It did not vary either
120 way. We were heading southeast by east. I know this because I saw the compass. I cannot say when I saw the compass. I saw it at different intervals.

Question. Do you know anything more about your heading than that you kept your vessel by the wind? If so, what do you know about it?

The wind was steady, and every time I looked at the compass she was going southeast by east. Our vessel would work within twelve (12) points of the wind. It depended how the wind was. I mean that she will work within from 10 to 12 points. Sometimes in light weather it would work closer than in heavy weather. We carried our lights in the mizzen rigging aft. I could not say how far it was from the midships aft. From the stern to the mizzen rigging I shóuld think was about 20 feet. Her beam is less at the mizzen than at the main or fore rigging. I cannot tell how much, but I think about a quarter of a foot. From the time we made the bright light of the propeller up to the
121 time of the collision the order' give' were—I gave Noland an order to call all hands; I told the man on the lookout to ring the bell; I told them to blow the horn at short intervals. I do not recollect whether I heard the captain tell the man to keep the horn blowing at short intervals. These are all the orders that I recollect hearing.

Question. Did your master hail the propeller and tell them to starboard her wheel and back her, or did you do it?

Both of us did. I did not hear any order given on our boat to the wheelsman from the time we made the light until the collision. When we made the light of the propeller the captain was on the top of the cabin, right in front of the wheel. I should think from 16 to 20 feet from the stern. I was aft the fore rigging on the starboard side. I was looking for the light. I reported it. They all sang out about the one time, "There is a light." Noland saw it first. I mean the man on the lookout sang out, "There is a light on our weather bow." I asked the captain if he had seen it. He said, "Yes." I got up
122 on the rail and watched his light until it disappeared. I staid there looking for the light. It was gone about a minute. I picked it up again right off. It was then off the weather bow about 3 or 4 points. I could not see the colored light then. I watched it until he pointed for us. Then I hailed the captain that he was coming square for us. I then told Noland to call the watch, and told the man on the lookout to ring the bell. I then went & called the watch myself. I did not know whether Noland had called it or not. Then I waited till 2 of them had got on deck. Then I started aft to call the mate & the cook. The first of it I took pretty easy, till after I called the men and saw that he was coming into us. I called the 3 men in the watch below. I do not know who the wheelsman was of the propeller that I had this talk with. I saw Noland put both of their names down in a book. I do not know who the lookout was. These statements which I have sworn to were made freely. The man on the
123 lookout made them in answer to questions. The wheelsman made them voluntarily and freely, talking pretty loud. I was never on a steamboat but once before this. I saw nobody in the engine-

room or about there. I was not there 15 or 20 minutes or half an hour. I was not there as long as that. It may be 4 or 5 minutes that I was around there. When I asked the captain to take us alongside of the bark, I done it on my own account. I did not tell him that I was 2nd mate. I did not hear the captain of the bark ask him to take him alongside. There are 32 of the compass. I can box the compass.

Redirect:

Did the lookout leave his post on the bark after 10 o'clock?

Not after 5 minutes after 10 o'clock, after the wheel was relieved. The man on the lookout generally attends to the blowing of the horn and ringing of the bell.

Does this interfere with his duties?

No, sir; that is what he is there for.

(Signed) GEORGE STEDMAN.

124 It is admitted that the foregoing testimony was taken subject to such objection as should be made at the reading as to competency and relevancy, whether noted at the time or not; that the commissioner examined the witness Henderson and Captain Stedman, in the case of Noland vs. The Propeller Colorado; that the testimony was read over to them before signing, & that they signed it; that Henderson said on that examination, "When I went below it was raining and very hazy," and "that after I got onto the propeller the weather was thick, foggy, and murky."

125 BERNARD CARLIN sworn:

My name is Bernard Carlin. I am 34 years of age. I am a grain inspector. I reside in Chicago, Illinois. I visited the propeller Colorado with Capt. Steadman on the 1st of June, 1869, between 6 & 7 o'clock or thereabouts, for the purpose of measuring the paint on her bows. The captain could not do it alone, and he asked me to go with him. She was then moored on the north side of the Chicago River, between Wells-st. bridge and Clark-street bridge. We took a tape-line in a small boat, and the captain stood at the stem and I went as far as I could see any green paint on her. The last paint that I could see on her was 12 feet 7 inches from the stem. It was in blotches, and ground in with the white paint on the propeller. This was on the starboard side. I saw that the port side showed some scratches of the paint. The Colorado was painted in the spring of 1867 in the slip back of Cen-
126 tral elevator B, in this city. I saw them painting her. She lay there in the slip all winter, and I saw her almost every day. She was painted white. There was scratches on both sides of her bow, as if she had come in contact with some hard substance. I did not notice how far these scratches extended. Sometimes they were small and sometimes in long streaks.

Cross-examination:

This was all the measurement that I made. I went and came away with the captain, and this was all the measurement that was made in my presence. I made no memorandum except a statement or affidavit which was not sworn to; this I made at the time. I did not see that the bows of the propeller was splinted any.

(Signed) BERNARD CARLIN.

JOHN HENDERSON recalled:

Question. State whether you had any conversation with the wheels-

man of the propeller about the bark running into him; and if so, what was said?

(Objected to.)

127 I had no particular conversation with him. I heard him pass the remark that he would be damned if he would like that jib-boom to come into him. I should judge that the propeller was coming about 5 or 6 miles an hour.

(Signed) JOHN HENDERSON.

NEAL MCCOLLUM recalled:

Question. What do you mean when you say the bark would make within 10 points of the wind?

I mean it would work 10 points or 5 points on either side; if the wind was south that it would work 5 points on either side.

Question. Whose business is it on sail-vessels to blow the horn and ring the bell?

The man on the lookout.

Question. Does it interfere with the duties at all?

It does not.

Recross:

Question. Did Mr. Brown come to you, and ask you to make an explanation of your statement about running by the wind, or did you call his attention to it?

He called my attention to it.

(Signed) NEIL MCCOLLUM.

128 (Witness attended as follows:) John Henderson, 2 days, 3.00; 3 miles travel, @ 10c., 30; Bernard Carlin, 1 day, 1.50; 2 miles, 20; Geo. Steadman, 2 days, 3.00; 3 miles, 30; Neil McCollum, 2 days, 3.00; 65 miles, 6.50—$17.80.

129 UNITED STATES,

Northern District of Illinois, ss:

I, Philip A. Hoyne, a commissioner appointed by the circuit court of the United States and for the northern district of Illinois, in the eighth circuit, under and by virtue of the acts of Congress, do hereby certify that the reason for taking the foregoing deposition, and the fact is, that the witness's reside at Chicago, Illinois, and more than one hundred miles from Detroit, the place where this deponent expects the said cause will be tried, is appointed by law to be held.

I further certify that no notification of the time and place of taking said deposition was made out, but by agreement both parties were present by attorney, and each witness was sworn and testified singly, all the other witnesses being excluded from the room while each testified.

I further certify that on the 30th and 31st day of March, A. D.
130 1870, I was attended by Henry B. Brown, of counsel, with the said libellant, and by Wm. A. Moore, of counsel, with the said respondent, and by the witnesses, who are of sound mind and lawful age, and the witnesses having been by me carefully examined and cautioned and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence, and I have retained the said deposition in my possession for the purpose of transmitting the same by mail to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the

parties in the said deposition and caption named or in any way interested in the event of the said cause.

In testimony whereof I have subscribed my name and affixed my seal this 31st day of March, A. D. 1870.

[L. S.] (Signed) PHILIP A. HOYNE,
U. S. Commissioner Northern District of Illinois.

[Stamp.]

My fees $25; witness, &c., 17.80—$42.80.—Paid by libellant.

(Endorsed:) Filed April 5, 1870. Wm. D. Wilkins, dep. clerk.

131 *Claimant's testimony.*

Depositions taken in Buffalo on the 21st day of September, A. D. 1869, before George Gorham, U. S. commissioner:

JOHN B. HALL.

I live in Oswego; I am a sailor; been on the western lakes since 1855 as a sailor, except one season; I am 31 years old; been before the mast, wheelsman, first and second mates of propellers; been second mate six or seven seasons; been first mate five seasons—not full seasons; been first mate three full seasons; been mostly in the Buffalo and Chicago trade; I was mate on the Colorado when she had the collision with the H. D. Bridge; had been on her all the season before, and all that season up to that time as mate, sailing with the same captain, Brett. I had been mate on other propellers as well; the collision happened the 12th of May, 1869; it was 12 o'clock at night, and was the 11th or 12th; either the night of the 11th or morning of the 12th. I went on watch
132 that night, shortly after supper, at six o'clock; my watch was to end at one o'clock; the collision was about twelve o'clock. I suppose it did not vary five minutes from that, either way, by our time, which I think was Buffalo time; the collision was about half way across Saginaw Bay; the collision happened in a fog; the commenced shortly after eleven, say a quarter past; at the time the fog commenced our course was north-northwest; just before the fog commenced our speed had been between nine and ten miles an hour, our usual speed; she could go faster if she was driven; the wind was about south when the fog set in; there was quite a fresh breeze; there was not a great deal of sea; it was a very dense fog after it shut in; such fogs have been very common on the lakes this season; I have seen it as foggy other seasons, but never more so; it was not rainy; before it altogether shut in, I called the captain; he was in his room; he did not come on deck; he told me to tell the engineer to let her go slow, to blow the whistle, and to call
133 him when the watch was out; I went aft; I told the engineer that it was thick, and to let her go slow, and I commenced blowing the whistle, and took my station in front of the pilot-house; the whistle was just forward of the smoke-stack; it was a very fine whistle—none better on the lakes; it is twelve or fourteen feet from the promenade-deck; I sounded it by a cord which runs to the pilot-house; one branch runs alongside of the pilot-house, and one on top of the house; I could sound it standing in front of the pilot-house simply by pulling on the cord; I sounded the whistle up to within a minute or two of the collision, every one to two minutes; probably I blew it as often as once a minute; Armstrong was at the lookout, and Ben. Walsh at the wheel; Armstrong was stationed on the promenade-deck forward; as far forward

as he could conveniently—get probably six or eight feet from the stern; there was no change at the wheel; Armstrong remained on look-
134 out till I called him to the wheel; the speed of the vessel was checked; after she was checked her speed was four to five miles an hour; her course after the fog shut in was north-northwest; this fog continued down to the moment of the collision. I heard other horns than those I finally heard on the Bridge; it was five or ten minutes after I heard the other horns before I heard those on the Bridge; heard one on the starboard hard about a beam, and I think two on the port-hand about a beam; they seemed to be half or three-quarters of a mile off. I heard a horn which afterwards turned out to be on the Bridge; first heard one blast of the Bridge's horn; it appeared to be directly ahead; it was between two and three minutes after I first heard the Bridge's horn before the collision; I was then standing in front of the pilot-house; I think the lookout and I both heard it at the same time; he asked me if I heard it, and I told him yes; he said "Did you hear that horn?" I said yes, and started for the pilot-house; I went on top of the pilot-house, and stopped both engines; gave an order to the man at the wheel to port; that
135 order was given just as I started to go on top of the pilot-house; I gave the order to port immediately upon hearing the horn; I went to the top of the pilot-house as quick as I could get there; the engine-bells on the Colorado are worked from the top of the pilot-house; the next thing I heard was two blasts of the Bridge's horn.

Ques. Where did the two blasts appear to be?

Ans. Nearly dead ahead, as nigh as I could tell.

Ques. What did you do on hearing these two blasts?

Ans. Ordered the wheel hard astarboard; ordered the lookout to the wheel to help put it over, and then backed the port-engine; that is, I rang to back.

Ques. Had the engine been stopped under your order to stop before you rang to back?

Ans. Yes.

Ques. Where was the lookout when you ordered him to go into the wheel-house?

Ans. He was at his station on the promenade-deck.

Ques. What would be the effect on the bows of your vessel, backing on the port-engine?

Ans. Steer her bows to port.

136 Ques. About how far should you think did the wheelsman have time to get the wheel on the port side, before you gave the order to starboard?

Ans. Probably a turn. I do not think more.

Ques. About how long, then, was it between the two orders, port and starboard?

Ans. It might have been half a minute.

Ques. Did the lookout go into the pilot-house?

Ans. Yes.

Ques. What, if anything, did you see them do with the wheel?

Ans. I saw them put it to starboard.

Ques. Was the port-engine backed?

Ans. Yes, sir.

Ques. What was the next thing which occurred after you gave the order to starboard the wheel?

Ans. I heard the horn again.

Ques. How many blasts?

Ans. Two.

Ques. Where?
Ans. It sounded nearly ahead still.
Ques. What was the next thing done?
Ans. I rang to back the starboard-engine.
Ques. Was it backed?
137 Ans. Yes, I suppose it was.
Ques. Where were you standing when you were giving these orders?
Ans. On the pilot-house.
Ques. Did both engines back after you gave the order to back the starboard-engine?
Ans. Yes.
Ques. How long did they continue backing?
Ans. The port-engine backed nearly a minute before I rang to back the other; they backed together about half a minute.
Ques. Did they back down to the time of the collision?
Ans. Yes.
Ques. When did you first see anything of the Bridge?
Ans. She was right under our bows before I saw her.
Ques. Was that before or after you rang to the starboard-engine?
Ans. After.
Ques. Had you seen anything of her signal-lights before you saw her?
Ans. No, sir; I should call her signal-lights her, and in speaking of seeing her, I meant her signal-lights.
138 Ques. Why did you not see anything of her before?
Ans. It was too thick a fog.
Ques. What signal-lights did you see on her when you saw any?
Ans. Green.
Ques. Did you hear anything on board the Bridge before the collision, and if so, what?
Ans. Yes, sir; I heard them sing out put your wheel astarboard, and back her.
Ques. Did you judge this to be sung out to you?
Ans. Yes.
Ques. Did you hear them sing out anything else?
Ans, No, sir, no sir; there was a general noise; could hardly distinguish; but I heard that distinctly.
Ques. Did you hear anything which you judged they were singing out to themselves—any order on their own vessel?
Ans. Heard some one sing out, "Hard up that wheel," which I judged was for their own vessel; I heard this three or four times.
Ques. The two vessels came in collision, did they?
Ans. Yes.
Ques. What do you judge your speed was at the moment of the collision?
139 Ans. Our way was nearly stopped; it might have been a mile an hour, and it might have been a half a mile an hour; it could not have been much.
Ques. Would it exceed a mile an hour?
Ans. No, sir; I don't think it would.
Ques. Where did you strike her?
Ans. Just forward of the main rigging on her starboard side.
Ques. What was your course down to the time you gave the order to port the wheel?
Ans. North-northwest.

Ques. What did you do with the whistle from the time you commenced sounding it down to the time you started to go to the top of the pilot-house?

Ans. I blew it regularly.

Ques. How often?

Ans. From one to two minutes; I sounded it once every one or two minutes.

Ques. How far did they get the wheel over under the order to starboard?

Ans. They got it hard over.

Ques. How much should you judge the vessel swung, under the order to starboard?

140 Ans. She might have swung a point; she could not have swung far with the way she had.

Ques. About how long were both engines backing before the collision?

Ans. About half a minute.

Ques. About at what angle did the vessels strike between the two bows?

Ans. About 45 degrees.

Ques. What does the sounding of one blast on a sail-vessel in a fog mean?

Ans. It means she is on the port tack, close hauled.

Ques. And what does two blasts mean?

Ans. That she is on the starboard tack, close hauled by the wind. When the vessels came together, I rang to stop both engines; they were stopped. The fog had continued very thick from the time that it shut in down to the time of the collision. Our vessel stood a good deal higher out of the water than the Bridge. The promenade deck of the propeller was about fifteen feet higher than the deck of the Bridge.

141 The men of the Bridge got aboard of us as soon as they could, immediately after collision; they came in on the anchor-stocks on the bow; the captain and two mates came in a boat. Our stem is nearly straight; the stem lay right up against the Bridge's side when they came together; it did not seem to cut into her much; I don't think more than eighteen inches. I could not see that we had cut into her at all. I did not see any sight of any break in her. Before the men came aboard, a line was passed to her, & before I left the pilot-house; it was the five-inch line we used to work on the promenade back; they did not make it fast to her; I don't know why; there was one man aboard long enough to have made it fast; his name was Dan, but do not remember the other name; he was before the mast. We were not asked to render any assistance, to my knowledge, to the Bridge. I told Captain Steadman I did not think she was hurt as much as he supposed, and he said he'd like to stay by her, and then he went

142 up on the hurricane deck. The men on the Bridge made no effort to save her that I could see. After our captain relieved me in the pilot-house he told me to go down forward and see if she was leaking any. I went down in the fore-peak and found her leaking considerably. I speak now of my own vessel. I could see the water running over the ceiling and could hear it plainly, and supposed it was leaking more below the ceiling. Had others with me making this examination. I was probably down there a quarter of an hour before I came up at all. I was down half a dozen times in the course of an hour. When I first saw the leak I judged we were in danger. I could not tell where, or to what extent it was. The vessels lay in nearly the same position for some

time; the vessels' topsail backed and held up together; we lay together an hour and five minutes; I know by the time the wheel was relieved, and asking the wheelsman what time it was; there was a clock right behind him in the pilot-house. I judge it was an
143 hour at least. The Bridge did not appear to have sunk any in that time. The Bridge's topsail filled and she drifted away from us. She did not appear to be sunk any then. I did not see any oats floating on the water. I saw the scum from the siphons; they are made for blowing the bilge-water from the vessels; it is a steam-pump; there are two siphons on a vessel; they were worked while we were lying there. I reported to the engineer that she was leaking forward, and he started the pumps, siphons, immediately afterwards. When I heard the two blasts of the horn on the Bridge, I asked the lookout if he heard two, and he said yes. He was then standing on the promenade deck, forward. Our signal-lights were in good order; they were good lights. The white light was at the mast-head. The red light on the port side. The green light on the starboard. The colored lights were on the arches, properly screened, and burning bright. We had
144 two engines and two wheels. I had papers as pilot of the first class. I never knew a man on the Colorado to be asleep at the wheel. I never told any I one did not understand the horns on the lake. When the vessels lay together our engines were not backed to my knowledge. We were bound from Buffalo to Chicago, with not more than a third of a cargo. Being

Cross-examined:

I don't remember what time of day we left Buffalo on that trip; it is a good while ago, and I have no particular object in remembering. When Mr. Hibbard asked me about this affair in his office, he did not ask me when we left Buffalo. We left Detroit about 4 o'clock in the morning. We passed Port Huron light at 12.10, noon; when I took the watch that night we were a little this side of Point au Barque; say fifteen or twenty miles. The collision was about forty miles from Thunder Bay light, and about thirty-five miles from Point au Barque light. The last light I saw before the fog shut in was Point au
145 Barque; lost sight of it about 9 o'clock. We run it out of sight, and were then fifteen or twenty miles from it; that night we ought to have seen the light fifteen miles; it is seventy-five miles from Port Huron light to Point au Barque light. When the fog shut in, and after calling the captain, I went in front of the pilot-house on the hurricane deck. I could not ring the engine-bells from that point. The nearest point I can go to ring the engine bells is the top of the pilot-house; the top of the pilot-house is nine or ten feet above where I was standing. I don't know that it is quite so much as that; it is considerably over my head. The steps to the pilot-house are abaft of it, and alongside of it; they lead down on both sides. After calling the captain I went back and told the engineer, and back to my station in front of the pilot-house on the hurricane deck, and commenced blowing the whistle. I went to the sky-light over the engine-room to
146 tell the engineer. The sky-light in nigher aft than forward; it is just abaft of the smoke-stack on the promenade deck. I walked from the pilot-house to the sky-light, and then back, or came back as quick as I could; while I was gone, there was no one on watch except the lookout. I was obliged to leave as I did; there was no one else there but the lookout; there was means of signalling the engineer to go slow; the bells was there. I did not use them, because it is customary to tell

the engineer, so he will know how to regulate his fires. The engineer answered me when I first called down the sky-light; he was standing between the engines. After I came back from the sky-light, I went in front of the pilot-house on the hurricane deck. I did not leave the hurricane deck till I went on the pilot-house; hearing the Bridge's horns ahead made me leave there and go on top the pilot-house.

Ques. The lookout swears you were on the promenade deck,
147 right by him, when he first heard the horn; which is right, you or he?

Ans. I am right, and he must be wrong; I swear I was not down on the promenade-deck when the horns of the other two vessels were heard. I was first mate of a propeller six years before this collision, and I had been first mate three full seasons; I am first mate on the Colarado now; I expect to remain there all the season; her tonnage is 1,470 tons; that is very large, one of the largest on the lakes; her usual speed is not more than nine or ten miles an hour; she would scarcely average nine this season; when the fog shut in I gave no particular orders to the wheelman, but told Jim, the lookout, to keep his ears open.

Ques. Is it not often the case, in a fog, when the officer of the deck hears horns, showing that there are several vessels in his vicinity, to go himself, or send some one aloft to look out for them?

Ans. It is, when the officer of the deck thinks you can see bet-
148 ter from the masthead than from below. Very often you can see better from the promenade-deck than from the masthead. It is often the case that they do send some one aloft in a fog; we could not see hardly anything from the promenade-deck that night.

Ques. If you could have seen the Bridge from 400 to 600 feet away, running at the slow rate of speed you say you were, and she kept her course close hauled on the starboard tack, don't you think you could have avoided her?

Ans. Could have avoided her if she had been directly ahead.

Ques. You say you think you might have entered her side about eighteen inches. You form that opinion to some extent from the low rate of speed you think you were going, don't you?

Ans. No.

Ques. If, when you struck the Bridge, you had been going from four to six miles an hour, would you not probably have gone into her from six to ten feet?

149 Ans. Yes, sir; I think we would. I called the captain when the fog shut in, because I was so ordered, and it is customary, and I would do it without orders. The vessel on the starboard hand was blowing a four blasts; those on the port I could not distinguish; they were apparently blowing both together, so it would be impossible to pick them out; they were blowing very often, and I did not consider we were in any danger from them, as they were abaft the beam; three blasts means that the wind is abaft the beam on the port side, and four blasts means abaft the beam on the starboard side; some blow three when they are dead before the wind, and some four; some blow one single blast in a fog, no matter how they are sailing; they don't always pay regard to rule. I saw a recommendation from the board of underwriters, and some follow it, but it is not invariable; I never knew there was any law established by Congress as to fog-signals for sail-ves-
150 sels; there is a rule established by Congress for fog-signals for steam-vessels. There is none for sail-vessels by law that I know of. When I gave my wheelsman the first order to port, I was standing in front of the pilot-house; I gave it just as I started for the top of the

pilot-house; he must have got the wheel half a turn over before I got to the top of the pilot-house; I went hastily; probably did not take more than five seconds; when I got there, I rang the bell to stop both engines; the engineer stops one and then turns and stops the other; he stops them by shutting the throttle, I suppose; I don't know but the motion of the boat will turn the wheel a turn or two after the engine is stopped. I think the wheelsman had got the wheel about half a turn to port when I got on the top of the pilot-house; and I think he had got it about one turn to port before I gave him the order to starboard; I could not tell how
151 long it took me to go from my station to the top of the pilot-house. I don't think it would take five seconds. The ladder has ordinary stair-steps. The wheel was about half a turn to port when I got to the top of the pilot-house, and that was from three to five seconds after I got the order to port; and then, in three to five seconds longer, he would have had it over one full turn to port, and at that point I gave him the order to hard astarboard. I rang the bell to back the port-engine; probably at the same time I gave the order to hard astarboard I had the bell-pull in my hands. To stop both engines I have to pull two separate wires, one for each engine. The starboard bell-pull sounds a whistle for the starboard-engine, and the port-bell a gong for the port-engine. Bell is a common *turn* used for an engine-signal, although it is not, in fact, a bell. I stopped the starboard-engine last, when I stopped the engines. Three turns of the wheel puts it hard over either way.
152 Two men will put the wheel over quicker than one. Shortly after the men got the wheel hard astarboard, the collision occurred. I think the wheel must have been over half a minute before collision.

Ques. The lookout, who helped put the wheel over, swears as follows: 'We had just got it hard astarboard when the collision took place." Is that correct or not?

Ans. If he means that he just got it there, and no more, he is not correct, for, I think, the wheel was hard over half a minute before I could see, and was watching it.

Ques. Would not the man who put the wheel over be more likely to be correct about that, for the reason that you had other things to look at, while he had not?

Ans. I don't think he would. I could see the wheel perfectly plain, and I watched it, and know how long they had it over.

Ques. Did you not ring to go ahead on the starboard-engine,
153 about the time you backed the port-engine?

Ans. No, sir.

Ques. Could you not see the Bridge when you ordered the port-engine backed?

Ans. No, sir.

Ques. How far off from you was she when you did see anything of her?

Ans. She was nearly under our bows. I don't think she was fifty feet off, and to port of us a very little; almost lapped on to us.

Ques. Was it after you saw the Bridge that you heard the order on her to hard up the wheel three or four times?

Ans. Yes, sir.

Ques. Measuring by the points of compass, about how many points of compass were there between the keels of the vessel as they struck?

Ans. About four. We have two compasses in the binnacle. We have no others that we used. All I know about the line being passed was what the second mate told me, and seeing the line then over the
154 port-bow just hanging down over the stem over on the deck of

the Bridge. There was a turn of it over our stay. The men came up on this line. They sung out for a line, and came up on this line. Some one said to make the line fast. We should not have made the line fast over the stay, if we had wanted to hold the vessels together. Our vessel was drawing about seven feet forward and our stem curves in. Slopes aft when it gets as low down as that; probably it commences to slope six or seven feet from the keel.

Ques. Measuring at the water-line that night, how wide would your boat be, in your judgment, measuring back 12 feet from the stem?

Ans. I think it would be about ten feet, and above that more. The captain's room is the first starboard-door on the promenade-deck; it brings it aft the pilot-house. I had no other collision last summer. I did not run my bows into anything unless it was in Chicago
155 River or Buffalo River. I may have pushed into something, but not to do any damage. I was down in the fore-peak about fifteen minutes at first. I came on deck and reported to the captain. I told the engineer some fifteen minutes after the collision that she was making water forward, and he started the syphons of his own accord.

Redirect.

Three turns puts the wheel hard over either way; that is, taking the wheel amidships. There was nothing in sight when the fog commenced that night. The line which was passed over was a full coil, nearly a hundred fathoms; don't know as there was so much; sixty, at least. I heard some one on our deck call to make the line fast. I don't know who it was. I suppose it meant to make it fast to the Bridge. They must have been most all on the Bridge then. There was a turn—sort of half-hitch—to our stay. If it had been made fast to the Bridge
156 it could have easily been made fast to a timber-head on our boat, as there was one within six feet. I heard a bell on the Bridge; that was almost at the time of the collision; she was under our bows fairly.

Ques. You said you understood there was no fog-signal for sailing-vessels by law. Did you mean by that that there was no fog-signal for a vessel by law at all, or that there was no separate signal indicating what tack a vessel was on?

(Objected to as leading, and withdrawn.)

Ques. Explain what you meant when you said you did not know there was any fog-signals for vessels prescribed by law?

Ans. Why, I meant that I did not understand that there was any stated number of blasts by law to indicate what tack a vessel was on. Our colored signal-lights were 15 or 18 feet higher from the water than the Bridge's. Men are sometimes sent to a mast-head in a fog to
157 to see if they can see anything. They can sometimes see better there than on deck. They could not see anything any better there unless it was above the fog.

Ques. Why did you not send a man to the mast-head at this time?

Ans. Because the fog was thick around our mast-head light, and appeared to be higher. It was the middle of the night, and he could not see anything but a light if he had gone up.

Ques. Would a sail-vessel's signal-light that night be above the fog?

Ans. No.

Ques. Could a signal-light on a vessel have been any better seen from a mast-head than from the promenade and hurricane deck?

Ans. No. I have been on the Colorado ever since the collision.

Recross.

Ques. Why do you swear that a vessel's light could not be seen
158 better from the mast-head than below, when you were not there, and cannot possibly know anything about it?

Ans. Well, sir, I could see the fog all about our mast-head light and colored lights, and going to the mast-head could not possibly make any difference.

Ques. And don't you so swear because you know it is a precaution seamen very often take, and you must give some excuse for not doing what was your duty?

Ans. No, sir.

(Signed) J. B. HALL.

Subscribed and sworn to before me the 21st day of September, 1869.

(Signed) GEO. GORHAM,
U. S. Commissioner.

159 ADAM HAIG, being duly sworn for the claimants, testified as follows:

I reside in Buffalo; I am 46 years of age; I am an engineer, and have been for 22 years on the lakes. I was first engineer on the Colorado at the time of the collision with the Bridge. I had papers as first engineer. I had been on her all of the season of 1868, and this season up to the collision. I was on watch as engineer, and had charge of the engine at the time of the collision. I went as watch after supper, a little after six o'clock, and my watch lasted till one in the morning. The collision happened about five minutes before twelve. I don't know the day. I paid particular attention to the time; I looked at the clock in the engine-room. The collision happened in a fog. The fog commenced about eleven o'clock; it was pretty thick, I should think. I don't pay much attention to the fogs; that is not part of my business.

The speed of our vessel before the fog commenced had been
160 about nine and a half miles an hour. That is her usual speed when on her regular trips. Soon after the fog commenced I got an order from the mate to check down. It was about ten minutes after the fog commenced that I got the order to check down. I did check down. She went, I should think, about three miles an hour after she was checked. She did not exceed four. The engineer is the best judge of the speed of the vessel. He knows what turns or revolutions his engine is making. I checked her down to about the same speed as I use when running around in a harbour. After I checked her down, the first order I got was signals to stop both engines. One is a gong, and one a whistle. We call them bells. Just as I got the order to stop, my speed was about three miles an hour, the same as it had been since I had got the order to check down. I obeyed the order to stop both engines right off. I was standing between the two engines. It was about

two minutes after I got the order to stop both engines before the
161 collision. It might not exceed two minutes. It may have been a minute and a half. The next order I got was to back the port engine. This order was only a few seconds after the order to stop both. When I got the order to back the port engine, I backed it. The next order was to back the starboard engine I did it. The order to back the starboard engine was about half a minute after I got the order to back the port engine. Both engines backed. One backed about a minute, and the starboard about half a minute before the collision. In giving these times I only give my estimates. It may have

been longer or shorter. The engines continued to back down to the time of the collision. I got the orders by the signals. When we struck the engines were backing. When the boat struck I was standing between the two engines on the main deck. That is the place where I work the engines. At the moment we struck our speed would not exceed a mile an hour, if it was that. I should think the headway was almost entirely stopped. I felt the jar, and that was all—
162 just merely felt it. I could not tell whether we ran into her any; I did not go and look. Judging from the speed of our boat, I don't think we could run into her a great ways, if we did at all. The boats lay together an hour and ten minutes by the clock. I looked to see. I used the forward syphon, which is about half-way between midships and the stem, on the starboard side. I used the other one on the port side some, but not so much. That is aft, under the boiler, about 62 feet from the stern. I heard no horns. That's not part of my business. I did not see the vessels as they struck. I was at my engine. After they struck I stopped the starboard engine first, and then the port. This was a few seconds after they came together. The Bridge drifted away from our starboard side after the hour and ten minutes. She did not appear to be sunk any when she drifted away. I did not back the engines before she drifted away. She drifted away before I started the engines. I stood in the gangway looking at her, and saw her as she was drifting past.

163 Ques. Did you ever tell a Mr. Nolan, or any body else, "that at the time of the collision the vessel was under a slow check; that she was working only one engine, or anything of that kind, or that at the time of the collision I was working only one engine?"

Ans. No, sir.

Ques. Did you ever say to Nolan, or did any such conversation as this pass between you or Nolan, or any one else, the next morning after the collision or any other time, in which any one said the mate did proper in backing with one wheel and going ahead with the other, or in which you allowed that the Colorado was working only one engine, or in which you said you were backing on one engine and went ahead on the other?

Ans. No, sir; there was no such talk or any of it with anybody; that was not the fact.

Cross-examined:

I don't know anything about the fog; I don't pretend to; about 11 o'clock the fog shut in; I observed it from the gangway; we were
164 going about nine and a half miles an hour; I know from the number of turns we were making; the mate gave me the order to check her down very low; that it was getting thick-foggy; he gave me this order down through the sky-light. I think he said the captain said for to check her down very low; I checked her right down at once; it would take the Colorado about ten minutes to get her speed down to three miles an hour as the sea was that night; the engine makes 20 to 25 revolutions to run three miles an hour; to run nine and a half miles she makes 70 revolutions. I counted about half-past eleven by my clock, and she was making 25, and then I shut her down more to make 20; this was about 20 minutes after the order to check down; running at nine and a half miles and shutting off all the steam, I think her headway would carry her two miles with sea and wind as it was that night; the signal to stop both engines was five minutes before 12; I shut the steam clear off immediately; then I was running about three (3) miles an

hour; then in three or four seconds I got the order to back
165 the port engine; I backed the port engine about half a minute, then came the order to back the starboard engine; they made about 80 revolutions in backing; we backed five open hard as I could; all this time I had a full head of steam; only kept the damper shut; I had not left the engine-room at all; it was 15 or twenty minutes after we struck when I went to the gangway and saw the Bridge; it was when the captain came aboard. I could see her lying at our bows, but it was that thick I could not see very well; she was lying close to our bows; I did not pay much attention; at about one o'clock I went out and looked at her again, she was then abreast our after gangway; her side was abreast of ours and about 60 or 70 feet away; I did not look at her over a few seconds each time; we started up about five minutes past one; our speed could not have been to exceed a mile an hour when I got the order to back the starboard engine, and that was about half a minute before the collision; we can run the Colorado more
166 than nine and a half miles, but my orders have been all the season to run her at nine to nine and a half, to save fuel. I had no conversation with any of the crew of the Bridge that morning in reference to the collision.

(Signed) ADAM HAIG.

Depositions taken in Buffalo, July 23rd, A. D. 1869, before George Gorham, U. S. commissioner, in the case of the National Insurance Company vs. Propeller Colorado, and used by stipulation in this case.

JAMES N. ARMSTRONG.

I live in Boston, Massachusetts; I am a sailor by occupation; I have been a sailor for 23 years; my experience has mostly been upon the oceans in the China and European trade; I have acted in all capacities from before the mast to mate; I have been going as officer, that is first, second, and third mate, for ten years; I was on the propeller Colorado when she had a collision with the H. P. Bridge; I think it
167 was on the 11th of May, 1869; I had then been on the Colorado since May 1st; I had shipped at Chicago, and came down with her, and the collision was on her return; I had acted as mate, mostly on ships, full-rigged ships; I had been on the lakes only since May 1st; I came from the seaboard here; I shipped at Chicago as night lookout; I served as such while upon her; I went on watch about half past six or seven in the evening, and remained on watch all night; that was my whole duty; the night of this collision, I went on watch at half past six; it was foggy at the time of this collision; the fog shut in about half past eleven; the chief mate was on watch when the fog shut in; I was on lookout, and Benjamin Walsh was at the wheel; the wind was about south when the fog shut in; there was about a five or six knot breeze; our lights were burning brightly, and were properly placed; I was forward on the promenade-deck, as far forward as I could get; the
168 mate was with me till the fog shut in, and then he went on the hurricane-deck forward of the wheel-house; our vessel, before the fog shut in, was going about nine knots an hour; when the fog shut in, we checked our vessel down; she was checked down directly after the fog shut in; from the time we checked till we heard the Bridge's horn, our speed was four or five knots; I speak only from my general judgment; it was a very dense fog; you could not see more than half a ship's length ahead; I remained forward as I have stated till I was called away to assist the man at the wheel; the collision was about 12

o'clock; I did nothing forward, but look out; I did not leave my position; I kept as good a look out as it was possible to do; I heard horns broad off the port bow; and one or two off the starboard bow about one point forward of the beam, about the same on each side; this was probably five or ten minutes before I herd the horn from the Bridge;
I heard the horn which was on the Bridge; I was standing
169 forward on the lookout, when I heard the first blast on the Bridge.
I should judge that was not more than two minutes before the collision. I heard only one single blast; it seemed to be right ahead. The mate and I were standing down forward together when I heard the first fog-horn, not on the Bridge. When I heard the first blast of the Bridge's horn he was on the hurricane-deck, forward of the pilot-house. When I heard the first blast of the Bridge's horn I asked the mate if he heard it, and he allowed he heard it, and said it sounded the same to him it did to me—right ahead. Almost immediately afterwards there were two blasts right ahead, and I judge from the same vessel. I did not hear the mate give any order between the first blast and the next two. The mate asked me if I heard the second blast. I told him I did. He asked me if I understood there were two blasts, and I told him I did. Next I was
called into the wheel-house by the mate to assist the man at the
170 wheel. I can't recolleet what words he used, but the expression was for me to get into the wheel-house as quickly as possible. I heard him give the man at the wheel an order to hard astarboard. That is the only order I heard the mate give the wheelsman. I heard the mate ring the bells; I did not understand the signals; I could not hear them in the engine-room from where I stood. When I got into the wheel-house the man at the wheel was rolling over *it* to starboard. When I got into the wheel-house I went to the port side of the wheel and helped the man to put it to starboard. The wheel was hard astarboard when the collision occurred. We had just got it hard astarboard when the collision took place. I did not notice how far she had swung before she collided; was not paying any attention to that at all. The propeller struck the Bridge on the starboard side. It was not raining any that
night; the sea was smooth; the vessels lay close together after
171 the collision; our stem was laying right up and down her side;
the stem did not appear to have cut into her any. I did not see any sign of break about the Bridge. In fact, it was dark; I could not see. Her men got off her by climbing up their main rigging and springing on to our anchor-stock; the anchor-stock was over our port bow. We lay together an hour before we separated. I saw these men when they came aboard us; I was then forward in my place; I had then left the wheel-house; I went away forward directly after the collision; when I went forward I was looking to see what damage was done the Bridge; it was so dark I could not tell whether we had cut into the vessel's side or not; I could not tell then whether our stem was in the side; our stem did not appear to be into her, but I could not tell, for I could not see her deck; I did not hear the breaking of anything; all I heard was the collision; there was no light passed over the bows. We separated after
being together about an hour. After we had parted ten minutes
172 she disappeared; she did not appear to have gone down any then;
there was a hawser passed over our starboard bow to the vessel; it was directly after the collision, and the men were then coming over our bow; the men came aboard right off; some men came in a boat; I don't know whether our line was made fast on her or not; if it was, it was cast adrift again; in fact, I don't think it could have been made fast, for the men did not stop aboard long enough. Before I heard the first

horn on the Bridge I had not seen any of her lights; it was too thick for that; did not see her lights till about a minute or two before the collision, and I was then in the wheel-house; saw both lights then right under our bow; we sat a good deal higher up out of the water than she did. Before we heard the Bridge's horn our course had been north-northwest. I only give that as I heard it; I did not look at the compass. After the fog shut in, we were blowing our whistle every one or two minutes;
173 the whistle is on the after part of the vessel, with a string leading to the wheel-house. I have had to stand watch, and I know the compass.

Cross-examined:

I live in Boston. I have almost always lived there. I never sailed on the lakes till this 1st of May. I never was on a steam-vessel as an officer, except I was quartermaster on a Government vessel, and also on the San Francisco and Panama line. I took a notion to come out here in the western country. I judge of the speed of a vessel by looking over the side only. The fog was very dense. It may have been ten minutes after the fog set in before I heard any fog-horn at all. The first horn we heard was two blasts broad off the port-bow. The propeller answered both of these. The propeller had been blowing her whistle some time before we heard any blast at all. It was probably a couple of minutes after this that I heard one blast from right ahead. It must have
174 been the Bridge, because she struck us so shortly afterwards. Almost immediately after it was we heard the two blasts, or a minute or two, probably. During all this time I was on the lookout. It was a very short time before the collision that I left the deck and went into the wheel-house. I was in the wheel-house at the time of the collision. I left the wheel-house almost immediately after the collision. When I got down on the deck the vessels were close together, our stem close to the side, about an angle of 45 degrees. The vessels were right close up together, touching each other. I think they lay alongside all of an hour; within a few feet of each other. It was blowing a five or six knot breeze, but the water was smooth. I saw the master of the Bridge when he came aboard. I did not hear any conversation between him and the officers of the propeller. The men came aboard by climbing up the main rigging, and coming on to our port anchor-stock, except four or five, who came in on a boat; and I don't know where
175 they came aboard. There was nothing done towards saving the Bridge except passing over the hawser. This was done before her crew left her. They did not ask any assistance. They made it a point to get aboard of us as quick as possible. I could distinguish the upper part of her after the collision, but not the deck; and I could not tell whether she was injured or not. I could see the water. Did not see any oats floating. The Bridge did not appear to be sinking at all up to the time we left her. I believe I did not *have* any orders aboard the propeller with reference to saving the vessel. I could have heard an ordinary order. The Colorado is nothing extraordinary, as far as I know, in the way of speed. Her usual speed was about nine knots. She ran, I judge, at the rate of about four or five knots after she had been checked down. I had no conversation with the captain of the Bridge about the collision. I was the only lookout up to the time of the collision. I did not say to Captain Steadman that this was
176 my first trip. I told one of the men that this was my first trip on the lakes, and I did not understand the signals of the horn. I did not tell Captain Steadman that the mate did not give me any instructions, and I did not believe he knew about them himself. I have said

very little about the matter to any one. I am still engaged on the propeller. I am not doing much of anything on her now. I have not talked with Captain Brett as to what I was going to swear to. I am in the employ of the owners of the boat, and shall be till I get back to Chicago. I am not on board in any particular capacity. I heard no bell on board the barque, or hailing before the collision. Heard them shouting after she struck. It could not have been more than one or two minutes before they struck when I saw her lights. She could not have been a great distance off. I had hardly got a glance at the light when they collided. I was lookout on the trip down.

Redirect:

I saw a Mr. Nolan on our boat after the collision. I never said
177 to Nolan or any one that the mate had not instructed me as to the fog-horns, and that the mate did not know himself. I never said this to Erskine. In giving statements of time, I have only given estimates. They might have been longer or shorter. When the mate told me to help the man at the wheel, I obeyed as quickly as possible. The horns I heard on the port and starboard side were not on the Bridge.

Recross:

From my position as lookout to the wheel-house is probably twenty-five feet. I got right up without going around; there was no conversation whatever between Captain Steadman and myself; I had but little conversation with the men, any of them; only occasionally with some of the men on the trip up to Milwaukee. I am not going to remain on the lakes; I shall go further west, or back east; and the time the collision occurred our vessel could not have been going more than one or two knots; she had almost lost her headway; she was moving
178 ahead some; my mind was on something else, and I can't tell how fast she was going. The mate, self, and wheelsman were the only ones on deck.

(Signed) JAMES N. ARMSTRONG.

JULIUS W. BRETT, sworn on behalf of claimants.

I reside at Cleveland. I am a sailor. I come on lakes, spring of 1838. Am fifty-five years old. Commenced sailing in 1830. Was master of vessel in 1834. I first went as master of propeller in 1855; have been master of propellers ever since, in Chicago and Buffalo trade. I *bore* [have] an interest in Colorado. We had about 400 tons general merchandise. Mate's name was John Hall; had been with me in 1868 and 1869 as first mate on Colorado; he was a very good man; always done his duty; appeared to understand it. He knew horn-signals on the lakes. Lookout I had shipped in Chicago; he was a sailor-man. Walsh had been with me only the one trip; he was a pretty good sailor-man; could steer a good trick. Last saw him in Mil-
179 waukee. When we got there on same trip of the collision, he wanted to go off the lake. I tried to get him to stay; he would not. I took him and had his deposition taken before any suit was commenced; he told me when he was in Chicago he would be at Stuyvesant House; have not seen him since that time; have made inquiry to find him in Chicago; have not been able to find him. I wanted him as a witness here. Commenced inquiry last Tuesday, I think; I could learn nothing of him. On night of collision, when fog come on, I was in my room lying on lounge; door of my room is about 15 feet abaft pilot-house. Hall called me; I told him to go back to engineer, and tell him to run her

slowly, & keep his whistle going. I stood at my room door. I know speed of boat was checked. As soon as he passed by forward, I lay down again on the lounge. I could see it was foggy; had my clothes on; had my boots off; while I lay there I heard nothing—no hails or horns. I went to sleep; I felt a jar; put my boots on, and
180 come out; did it as quick as I could; stepped forward, and saw a vessel forward, & some of the men coming over our bows; they were climbing over our port-bow, on the anchor-stock; there were 4 or 5, I think; port-anchor stock is along the stem; could not see whether vessel had cut in. I went on top of pilot-house; mate told me the engines were stopped; they were not working at that time. I told the mate to examine the condition of our vessel—to take a light and go down and see if she was making any water; he went; he was gone 15 minutes, I should judge; when he came back he said she was making considerable water. I told him to tell engineer to blow his syphon & try & keep her clear; the effect of blowing syphon is to blow *some* [scum] of bilge-water out, *white* [which] blots on surface of water. I could see about 150 or 200 feet from top of pilot-house; some one come up there; think it was capt's son; wanted I should stay by her until they could get their clothes; I told him I would; I told them to give them a line.
181 The line was not made fast to the vessel; don't think they had time to make it fast; think they were all on board within 2 minutes, except capt. and 2 mates; they come on board in 10 or 15 minutes. I think we were in pretty bad condition; stem was all knocked off. It had been slivered up before; what was left was all gone; we were together touching about an hour. I could not see from top of pilot-house that we were into her any; then we swung around; her topsail filled & she went away from us. I then put my helm aport, & went ahead on port-engine & tried to overtake her; did not succeed; finally went off, and left her; had to go slow for fear of running into her. When fog come on we were about 25 or 28 miles from Point au Barque; depth of water on our course is from 30 to 40 fathoms; was present when measured about green paint; was green paint on other parts of vessel, in different places; got it on in rubbing past vessels in the
182 creek; was green paint on starboard quarter, on bulwarks alone. Green paint is common on boats. Our stem is what is called a straight stem. I did not see any oats float on the water. I had some conversation on subject of collision with capt. of Colorado, just after I gave up searching for her. I was standing on starboard side of promenade deck forward. I went up to him and asked him if he was capt. of vessel. He said he was. I afterwards knew him to be the capt. He said: *This* [Sir,] fog and snow will beat the d—l. He said: I could see your bright light, but I am satisfied you could not see ours. I did not see that either the officers or crew of vessel attempted to ascertain what damage was done to the vessel. We could see nothing but her green light; could see no light in her forecastle. I had talk with capt. of vessel in Chicago about collision. Captain Steel was present. He went into my room with Capt. Steel. He said they had plenty of
183 time to save their clothes, and that they might have saved their vessel if they had stayed by; but they all deserted him; nothing else said at that time. My vessel, 13 ft. abaft stem, could not have been less than 12 ft. across, on head of deck of barque.

Cross-examination:

Collision was about 35 miles from Thunder Bay light; fog continued all night. I remained on deck. After collision steered N. N. W. part

of time; took this course about 2 o'clock. Wheelsman had signed shipping-articles in Chicago; shipped on round trip. He did not know to what part of Canada he was going. When barque had topsails aback, she was heading about S. E. by S. or S. E.

Question. Can you explain to me how it was that the barque, with wind about S., she heading S. E. by S., close headed on starboard tack, could get her topsails aback?

Answer. Because her topsails would not stand full within 3 points of the wind.

184 Question. Why, under the same conditions, did she not drift away from the propeller, either astern or sidewise?

Ans. Because her fore and aft canvass was partially full, and held her head, & the wind being almost after the propeller, kept her up to her.

Question. You started your syphon after mate had made his report?

Answer. In about 15 or 20 minutes after the collision. There was no scum on water until after syphon was blown; did not make Thunder Bay light at all; made land at south'ard of Hammond Bay, along next afternoon about 4 or 5 o'clock, about 55 miles beyond Thunder Bay. The fog held on until that time; did not keep her checked down all the time; part of time fog cleared away; then let her go along. About daylight in the morning we began to see so we could go along without risk. Have 2 men at wheel in going into port. Capt. John Lyman bought claims; some papers were got out; presume it was a libel.

185 Capt. John Lyman lives in Chicago. He did not sail then; don't know that owners of my boat got Capt. Lyman to buy claims. He told me he had bought them. Capt. Lyman is not the agent, and was not at that of the Colorado.

Re-examination:

I went on Colorado as master in spring of 1867, and remained so up to collision. I saw scum from syphon on both sides of the vessel. I could tell that the vessel had stopped because the tremor caused *was* by the engine when in motion had ceased. The paper I called a deposition was a statement taken before a notary public.

Question by the court:

Forward syphon discharges about the centre or a little abaft the centre on starboard side. The after syphon discharges on port side, about 160 or 170 ft. from stem of the vessel. We were laying under steamer to wind, and the wind blew scum forward.

186 CHARLES ENSIGN sworn for claimants.

I reside in Buffalo; am one of claimants in this suit; have been in transportation business about 23 years; remember collision. On inquiry after I heard of collision, I ascertained wheelsman had left at Milwaukee; that he had had his affidavit taken before a notary public at Milwaukee; I ascertained that he had gone, if I recollect right, somewhere in Canada East, to what locality I don't remember. I made some effort to keep track of him, but lost him. I have lately made particular inquiries for him. Was told W. H. that his evidence was important, and I telegraphed to Chicago to have inquiry made among boarding-houses and masters of vessels. I also telegraphed to Emmons & Van Dyke, of Milwaukee, to send me copy of his affidavit. I received reply that the affidavit was taken before a notary of the name of Roby, and that they thought it had been given to Tibbits. My tele-

187 graph was handed to Mr. Tibbits for him to look up affidavit and send it. These efforts have been made in good faith.

Cross-examined:

The efforts I have made were made in the last week. Owners of Colorado were Geo. W. Holt & myself. Know Colorado was libelled in Chicago for loss of sailors' clothes. I suppose the bills were paid. I paid some money to Brewster, or rather he used our money in his hands. Don't know who was attorney for libels. I suppose payment on money ended the suit.

Re-examined:

We settled claims because Mr. Bates sent us a bill of some $400 where some testimony had been taken, and I think it either settle——

Ques. Did you retain the att'ys for the sailors?

Ans. We bought up the claims, and I supposed the attorneys went with them.

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189 UNITED STATES OF AMERICA.

[Ship.]

STATE OF WISCONSIN,
Milwaukee County, ss:

To all people to whom these presents shall come or may concern:

I, Charles A. Hamilton, a public notary, in and for the State of Wisconsin, by letters-patent under the great seal of the said State, duly commissioned and sworn, dwelling in the city of Milwaukee, send greeting:

Know ye that, on the fourteenth day of May, in the year of our Lord one thousand eight hundred and sixty-nine, before me, the said notary, appeared Julius W. Brett, master of the propeller called the Colorado, of Buffalo, burthen 1,470 $\frac{55}{100}$ tons, and noted in due form of law with me, the said notary, his protest for the uses and purposes hereinafter mentioned; and now, at this day, to wit, the day of the date
190 hereof, before me, the said notary, at the city of Milwaukee aforesaid, again comes the said Julius W. Brett, and requires me to extend his protest; and, together with the said Julius W. Brett, master, also comes John Burton Hall, mate; James W. Armstrong, lookout; Benjamin Walsh and Adam Haig, engineer, (the said Walsh being wheelsman,) belonging to the aforesaid propeller, all of whom, being by me duly sworn, voluntarily, freely, and solemnly do declare and depose as follows, that is to say: That on Sunday, the ninth day of May, A. D. 1869, he, the said Julius W. Brett, set sail and departed in and with the said propeller as master thereof, from the port of Buffalo, in the State of New York, having on board the said propeller a cargo of general merchandise, and bound for the port of Chicago, Illinois, & intermediate ports; that the said propeller was then stout, staunch, and strong; had her cargo well and sufficiently stowed and secured; was well
191 masted, manned, tackled, victualled, apparelled, and appointed; and was, in every respect, fit for sea and the voyage she was about to undertake.

That said propeller proceeded on her voyage aforesaid, and reached the entrance of Lake Huron on Tuesday, the eleventh of May, at about 12 o'clock m., & proceeded onwards until shortly after eleven o'clock p. m., Buffalo time, when a dense fog set in, wind about south, & our course about north-northwest. The said Hall, mate, then had charge of the deck, said Armstrong on deck as lookout, said Walsh was

at the wheel, & said Haig on duty as engineer. When the fog came on orders were given by the mate to slow her speed, which was accordingly done. Blasts of the steam-whistle were sounded at intervals of from one to two minutes. Near midnight heard fog-horns on either side of us, & one indistinctly nearly ahead. We stopped both engines, and told the man at the wheel to port. The vessel ahead, then unknown,
192 blew two blasts of her horn. The order to port was then countermanded, & ordered man at the wheel to put his helm hard astarboard, & ordered port engine backed. The engine backed nearly a minute; heard the horn again, & then ordered starboard engine backed, when we shortly collided with a vessel which afterwards proved to be the barque H. P. Bridge. We struck her on her starboard side, just forward of the main rigging. We took the crew of the Bridge aboard of us, some of them clambering over our bows, & some of them coming off in the vessel's boat. We stood by the vessel about an hour, when we lost her in the fog. We were leaking badly, & proceeded on our voyage, arriving at Milwaukee at 5 o'clock a. m., May 14th. The Colorado was badly damaged in her stem, causing leak, and she is now lying in the port of Milwaukee awaiting such repairs as may appear necessary.

And the said Julius W. Brett further says that, as all the dam-
193 age and injury which already has, or may hereafter appear to have happened or accrued to the said propeller, or her said cargo, has been occasioned solely by the circumstances hereinbefore stated, and cannot nor ought to be attributed to any insufficiency of the said propeller, or default of him, this deponent, his officers or crew, he now requires me, the said notary, to make his protest, & this public act thereof, that the same may serve, and be of full force and value, as of right shall appertain. And thereupon the said Julius W. Brett doth protest, and I, the said notary, at his special instance and request, do by these presents publicly & solemnly protest against winds, weather, & seas, & against the collision aforesaid, and all & every accident, matter, and thing had & met with as aforesaid, whereby or by means whereof the said propeller or her cargo already has, or hereafter shall appear to have suffered or sustained damage or injury, for all losses, costs, charges, expenses, damages, and injury which the said propeller or the owner or owners of the said propeller, or the owners,
194 freighters, or shippers of her said cargo, or any other person or persons, interested or concerned in either, already have, or may hereafter pay, sustain, incur, or be put unto by or *or* on account of the premises, or for which the insurer or insurers of the said propeller or her cargo is, or are, respectively, liable to pay or make contribution or average according to custom, or their respective contracts or obligations, and that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall on him, the said Julius W. Brett, master, his officers or crew.

Thus done and protested in the city of Milwaukee, Wisconsin, this fourteenth day of May, in the year of our Lord one thousand eight hundred & sixty-nine.

In testimony whereof I, the said notary, have subscribed these presents, and have also caused my seal of office to be hereunto affixed, the day & year last above written.

[NOTARIAL SEAL.] (Signed) CHARLES A. HAMILTON,
Notary Public.

195 STATE OF WISCONSIN,
Milwaukee County, ss:

Julius W. Brett, master; John Burton Hall, mate; James M. Armstrong, lookout; Adam Haig, engineer; Benjamin Walsh, wheelsman of, and belonging to, the propeller called the Colorado, being severally duly sworn, do severally make oath and say that the foregoing instrument of protest has been clearly read over to them, these deponents, and that the several matters and statements therein contained are right and true in all respects, as the same are therein particularly alleged, declared, and set forth.

(Signed) JULIUS W. BRETT.
JOHN B. HALL.
JAMES M. ARMSTRONG.
BENJAMIN WALSH.
ADAM HAIG.

Subscribed & sworn to before me this 14th day of May, 1869.
CHARLES A. HAMILTON,
Notary Public for the State of Wisconsin, residing in the City and County of Milwaukee. (*Milwaukee Sentinel.*)

[Stamps.]

STATE OF WISCONSIN,
Milwaukee County, ss:

I hereby certify that the foregoing is a full & true copy of a protest this day noted and extended before me.

Witness my hand & notarial seal this 14th day of May, 1869, at the city of Milwaukee, county & State aforesaid.

[NOTARIAL SEAL.] (Signed) CHARLES A. HAMILTON.

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197 UNITED STATES OF AMERICA.

STATE OF WISCONSIN,
City of Milwaukee, ss:

To all people to whom these presents shall come or may concern:

I, J. L. Hathaway, a public notary in and for the county of Milwaukee, State of Wisconsin, by letters-patent under the great seal of the said State, duly commissioned and sworn, dwelling in the city of Milwaukee, send greeting:

Know ye that, on the 14th day of May, in the year of our Lord one thousand eight hundred and sixty-nine, before me, the said notary, appeared Isaac D. Stedman, master of the bark called the H. D. Bridge, of Detroit, Mich., burthen, 425 tons, and noted in due form of law with me, the said notary, his protest, for due use and purposes hereinafter mentioned; and now, at this days, to wit, the day of the date hereof, before me, the said notary, at the city of Milwaukee aforesaid, again come'
198 the said Isaac D. Stedman, master, and required me to extend his protest; and together with the said Isaac D. Stedman, master, also comes Neil McCollum, 1st mate; George S. Stedman, 2nd mate; Lincoln H. Erskine, seaman, belonging to the aforesaid bark H. P. Bridge, all of whom being by *be* duly sworn, voluntarily, freely, and solemnly, do declare and depose as follows, that is to say, that on the 7th day of May, 1869, about 6 o'clock a. m., he, the said Isaac D. Stedman, set sail & departed in and with the said bark H. D. Bridge, as master thereof, from the port of Milwaukee, Wis., having on board the said bark a cargo

of 30,535 bushels of oats (& 65,000 brick on deck) and bound for the port of Buffalo, N. Y.; that the said bark was then stout, staunch, and strong, had her cargo well and sufficiently stowed, and secured; was well masted, manned, tackled, victualled, apparelled, and appointed, and was in every respect fit for sea, and the voyage she was about to undertake. Proceeded on voyage, nothing unusual occurring until Tuesday, 11th of May, 1869, about 10.30 o'clock p. m., about forty
199 miles E. S. E. of Thunder Bay Island, Lake Huron; wind south; weather setting in thick and foggy; shortened sail, furled all light sails, hauled up foresail, when we heard whistle of propeller, about two points on starboard bow; answered whistle by blowing fog-horn; kept on our course S. E. by E., by the wind, the propeller coming nearer, continuing blowing her whistle, we answering by blowing fog-horn until about 11.40 o'clock p. m.; weather still thick and foggy when propeller came upon us, striking vessel forward of the mainmast and cutting into vessel about eight feet; vessel immediately commenced filling. The crew clambered up bow of propeller; myself and two mates got out yawl, and were picked up by propeller, now ascertained to be the propeller Colorado, bound from Buffalo to Chicago, with cargo of merchandise. Propeller staid by until the vessel's lights disappeared entirely, this about 12.40 o'clock a. m. Wednesday, May 12th, 1869, vessel
200 going down with cargo on board. And the said Isaac D. Stedman, master, further says, that as all the damages and injury which already has or may hereafter appear to have happened or occurred to the said bark H. P. Bridge or her said cargo has been occasioned solely by the circumstances hereinbefore stated, and cannot nor ought to be attributed to any insuffi'ency of the said bark H. P. Bridge, or default of him, this deponent, his officers or crew, he now requires me, the said notary, to make his protest and this public act thereof, that the same may serve, and be of full force and value, as of right shall appertain. And thereupon the said Isaac D. Stedman, master, doth protest, and I, the said notary, at his special instance and request, do by these presents publicly and solemnly protest, against winds, weather, and seas, and against all and every accident, matter & thing, had and met with as aforesaid, whereby or by means whereof the said bark H. P. Bridge, or her cargo, already has, or hereafter shall appear to
201 have, suffered or sustained damage or injury, for all losses, costs, charges, expenses, damages, and injury which the said bark H. P. Bridge, or the owner or owners of the said bark H. P. Bridge, or the owners, freight', or shippers of her said cargo, or any other person or persons interested or concerned in either, already have or may hereafter pay, sustain, incur, or be put into by or on account of the premises, or for which the insurer or insurers of the said bark H. P. Bridge or her cargo is or are respectively liable to pay or make contributions or average according to custom or their respective contracts or obligations, and that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall on him, the said Isaac D. Stedman, master, his officers or crew.

Thus done and protested in the city of Milwaukee, this 14th day of May, in the year of our Lord one thousand eight hundred and sixty-nine.

In testimony whereof I, the said notary, have subscribed these presents, and have also caused my seal of office to be hereunto affixed, the day and year last above written.

[L. S.] (Signed) J. L. HATHAWAY,
Notary Public.

202 STATE OF WISCONSIN,
City of Milwaukee, ss:

Isaac D. Stedman, Neil McCollum, George S. Stedman, Lincoln H. Erskine, officers and seamen of, and belonging to, the bark called the H. P. Bridge, being severally duly sworn, do severally make oath and say that the foregoing instrument of protest hath been clearly read over to them, these deponents, & that the several matters and things therein contained are right and true in all respects as the same are therein particularly alleged, declared, and set forth.

(Signed) ISAAC D. STEDMAN.
(Signed) NEIL McCOLLUM.
(Signed) GEORGE S. STEADMAN.
(Signed) LINCOLN H. ERSKINE.

Subscribed and sworn to before me this 14th day of May, 1869.
(Signed) J. L. HATHAWAY,
Notary Public for the County of Milwaukee.

A true copy—attest:
(Signed) J. L. HATHAWAY,
Notary Public Mil. Co. Wis.

203 At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in Detroit, on Tuesday the eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy-one;

Present, the honorable John W. Longyear, district judge.

On a libel for collision.

ELVA W. HUDSON
vs
PROPELLER COLORADO, HER ENGINES, &c. } In admiralty.

This cause having been heretofore heard and submitted to the court for judgment, and the court having taken time to consider of its decree therein, and having matured, weighed the pleadings and proofs, and the arguments of counsel submitted therein, and due deliberation being had, it is now by the court ordered, adjudged, and decreed that the libellant, Elva W. Hudson, do recover of and from the said pro-
204 peller Colorado, and from the claimant in this cause, the full amount of his damages sustained on occasion of the collision mentioned and set forth in the libel filed in this cause, and it is ordered that it be referred to the clerk of this court as a commissioner to take proofs concerning and to ascertain the amount of said damages, and to report the same to this court, together with the proofs so taken, with all convenient speed.

205 [L. S.] In the district court of the United States for the eastern district of Michigan.

ELVA W. HUDSON
vs.
THE PROPELLER COLORADO. } In admiralty.

ELVA W. HUDSON, a witness produced and sworn on behalf of the libellant, examined by H. B. Brown, deposes and says:

I live in Detroit, Michigan; I am vessel-owner; I have been engaged in the vessel business about 20 years, more or less; I have owned thirty vessels, more or less; I have bough' and sold vessels.

Q. Have you been acquainted with the values of vessels here for the past five years?

A. Yes.

Q. You owned the barque H. P. Bridge at the time of her loss?

A. Yes.

Q. What was her tonnage?

A. I disremember exactly.

206 Q. How many bushels does she carry?

A. Between 29,000 & 30,000 bushels of corn she has carried.

Q. How old was she at the time of her loss?

A. Five years.

Q. What was her value—her market value, as vessels are bought and sold ordinarily?

A. I can't tell what her market value was; she never was sold. I can tell what her value was to me.

Q. What did you consider her worth?

(Objection. Objected to as incompetent.)

Q. I mean as vessels are ordinarily bought and sold?

(Objection. Objected to as incompetent.)

A. Twenty-five thousand dollars.

Cross examined by W. A. Moore.

Q. Do you know of any vessels being sold here of about her class that season?

A. I know by hearsay about that time, but to say positive as to that season I cannot.

Q. What was her fair cash value, in your judgment?

207 A. I don't think I would have sold her on any terms at less than $25,000.

Q. What would she have brought, cash?

A. I don't know what she would brought under the hammer.

Q. How did she compare with the Baldwin?

A. She was some smaller than the Baldwin, & I think a year older.

Q. Wasn't she two years older?

A. She may have been; I am not sure.

Q. How much did the Baldwin carry?

A. 33,500 bushels of corn ordinarily.

Q. Don't she carry 40,000 bushels?

A. No, sir.

Q. You say you don't know of any vessel being sold about that time. How did the market in 1869 compare with that in 1870?

A. I think they were worth more in 1869. They depreciated that year, I think.

Q. Was not the Baldwin valued at $20,000 in the spring of 1870?

(Objected to as incompetent.)

A. She was by some appraisers. I can't recollect whether it was spring of 1870 or summer.

208 Q. Did you not at that time claim that that was her full cash-value?

(Objected to as incompetent.)

A. I did not.

Redirect examination by H. B. Brown:

Q. For what purpose was the Baldwin appraised?

She was libeled, & had to be bonded at her appraisal value, & she was appraised for that purpose by disinterested persons.

Recross-examination by W. A. Moore:

Q. Did you not ask that her value be appraised, & that she be bonded in her appraised value, and was not the appraisal made at your request?

A. I believe so. I did it as I understood to be a matter of form in all similar cases.

(Signed) E. W. HUDSON.

Subscribed & sworn to before me this 3rd day of November, A. D. 1871.

HOYT DOST,
Notary Public.

209 JAMES M. JONES, a witness produced & sworn on behalf of libellant, & examined by H. B. Brown, deposes and says:

I reside in Detroit, Michigan. I am a ship-builder, & have been for 25 or 30 years. I have built about 100 vessels, & owned some.

Q. Are you acquainted with the prices of vessels at which they have been bought & sold for the past five years?

(Objected to as incompetent.)

A. I am.

Q. Are you acquainted with the market-value of vessels?

A. I am.

Q. Did you know the barque H. D. Bridge?

A. I did. I built her.

Q. In what year?

A. Six or seven years ago—in 1864 or 1865.

Q. How was she built?

A. She was a good fair-built vessel.

Q. What was her market-value in 1869, at the time of her loss?

A. I should call her worth $25,000.

Cross-examined by W. A. Moore:

Q. What vessel of about that class was sold for that price in the fall of 1869?

210 A. I don't remember of any being sold at that price at that time. The City of the Straits was sold about six months or a year before for $29,000, I think.

Q. What was her burthen?

A. I don't remember her tonnage.

Q. What did she carry?

A. About 27,500 or 28,000 bushels.

Q. What was her age?

A. She was a year younger, I believe.

Q. Was that on long time or cash?

A. I do not know what terms as to time.

Q. What was the price new per ton in the fall of 1869?

A. Thirty-eight dollars, I think.

Q. What was it in the fore part of the season?

A. The same, I think.

Q. Fully rigged?

A. No; only carpenter-work.

Q. What was the price fully rigged?

A. About 10 shillings a bushel for which she carried. I never fitted out a vessel & built her on contract. I only built.

(Signed) J. M. JONES.

Subscribed & sworn to before me this 3rd day of November, A. D. 1871.

HOYT DOST,
Notary Public.

211 HUGH COYNE, a witness produced & sworn on behalf of the libellant, and examined by H. B. Brown, deposes & says:

I live in Detroit, Michigan. I have been in the vessel business for 25 years. I have owned 15 or 20 vessels; couldn't tell exactly. I knew the barque H. P. Bridge at the time of her loss.

Q. What was her market-value in May, 1869?

A. If she was as I think she was, I should call her worth $25,000.

Q. What do you mean by "as you think she was?"

A. If nothing had happened to her; I understood she was sound, and well fitted up. That being the case, she would be worth $25,000.

Cross-examined by W. A. Moore:

Q. When had you last been aboard of her?

A. I couldn't tell that.

Q. Had you been aboard of her within 2 years before her loss?

A. I think I had.

Q. Do you know of any vessels of her class having been sold about that time?

A. I do not know of any.

212 Q. Do you believe she would have sold for $20,000 cash in this market?

A. Yes, sir; I do.

Q. Upon what do you bass your opinion if you know of no vessels being sold that season?

A. From her capacity & carrying, or carrying capacity.

Q. Was not the vessel business rather dull in the summer of 1869?

A. Yes, sir.

Q. How did she compare in value with the Baldwin, in 1869?

A. The Baldwin ought to have been worth in the neighborhood of $10,000 more than the H. P. Bridge.

(Signed) H. COYNE.

Subscribed & sworn to before me this 3rd day of November, A. D. 1871.

HOYT DOST,
Notary Public.

The examination is here adjourned until November 4th, 1871, at 10 o'clock a. m.

NOVEMBER *4th*, A. D. 1871—10 a. m.

H. B. Brown appears for libellant; W. A. Moore appears for respondent.

213 JAMES E. DITTMAN, a witness produced & sworn on behalf of the libellant, & examined by H. B. Brown, deposes & says:

I live in Detroit. I have been interested in vessels—three different ones. I am acquainted somewhat with vessels & their values.

Q. Were you acquainted with the barque H. P. Bridge before her loss?

A. Yes, sir.

Q. What was her value at the time of her loss?
A. I should place her at about $25,000.

Cross-examination by W. A. Moore:

Q. Do you know of any vessel being sold of about her class at that time?
A. No; not just at that time.
Q. How long before?
A. Well, two seasons & three seasons before.
Q. Were the vessels you refer to sold on time or for cash?
A. One was sold for cash, and the others, I suppose, on the usual terms. I could not say just what the terms were.
Q. What was the burthen of the vessel that you knew that was sold for cash, and when was she sold?
214 A. In the fall of 1866 I built a vessel of much less capacity than the H. P. Bridge—I believe her registered tonnage was about 393 tons. That vessel cost us $35,000 in cash.
(Objected to as not responsive to the question by Mr. Moore.)
A. The vessel I referred to was not sold for cash—I meant by my answer to the former question, this vessel that I built—that is the cash part of that answer. The barque Summer Cloud sold at over $30,000; my impression is about $35,000. I am not certain. She was of less capacity than the H. P. Bridge. The schooner Harvest Home, I think, of less capacity that the H. D. Bridge, sold at over $30,000. This was one of E. W. Hudson's vessels. I am not certain whether her name was Harvest Home or Harvest Queen. I am not certain about this, I may be mistaken.
Q. Question repeated.
A. I don't know of any being sold for cash; the one I referred to was the vessel we had built. I referred to the cost price of her, & I bought an interest in her at that rate.
215 Q. Was not vessel stock very much lighter in 1866 & 1867 than in 1869?
A. It was higher.
Q. Was not the expense of building vessels very much greater in 1866 & 1867 than in 1869?
A. I am not sufficiently acquainted with that to answer. My impressions are that it cost less to build in 1869 than in 1866.
Q. Do you know of a vessel about that class being sold for cash in 1868 or 1869?
A. No, sir.
Q. Do you know the net earnings of a vessel of about that class for the year 1869?
(Objected to as irrelevant.)
A. I know the net earnings of my own vessel; that is all I know about it. It varies according to the trade a vessel is engaged; in one trade a vessel will earn very much more than in another.
Q. Do you know about the profits of a vessel of about that class in the grain trade in the season of 1869?
(Same objection.)
A. I know the profits of my own vessel; she was engaged in that trade.
Q. What was the carrying capacity of your vessel?
216 A. 26,000 bushels.

Redirect examination by H. B. Brown:

Q. When did you buy the interest in the City of the Straits?
A. In the winter of 1866–'7.

(Signed) JAMES E. DITTMAN.

Subscribed & sworn to before me this 4th day of November, A. D. 1871.

HOYT DOSY,
Notary Public.

WELCOME W. HART, a witness produced & sworn on behalf of the libellant, & examined by H. B. Brown, deposes & says:

I reside at Grand Rapids; I was engaged in the vessel business in Detroit, in 1864 & 1865 and in 1868 & 1869. I was somewhat acquainted with the value of vessel property during those years. I recollect the barque H. D. Bridge; I have seen her frequently.

Q. What was her value, her market value, in the spring of 1869?
A. From the best of my judgment and opinion, as vessels were bought and sold, from $25,000 to $28,000. I think if she had been put into
217 the market she would have sold for that; that is, as vessels were bought & sold & held at that time.

Cross-examined by W. A. Moore:

Q. Were you aboard of her in the year 1868 or 1869, to examine her as to her condition & value?
A. I don't recollect any particular time; I have seen her at the dock, & know her general reputation.
Q. Are you a mariner by profession?
A. I am not. I am a printer by trade.
Q. What are you engaged in now?
A. I am out of business at present.
Q. Do you know of any vessels having been sold here in 1868 or 1869 of about the class of the H. P. Bridge, for cash?
A. I think the schooner City of Tarvas was sold one-quarter interest, at the rate of $25,000 for the whole of her; I was so informed. She was a vessel of about two-thirds the size of the H. P. Bridge; she was sold in the winter of 1867–'8, I think; she was sold for money, but not all cash down; sold as vessels usually are, partly on time..
218 Q. Was vessel stock on the downward or upward tendency in the season of 1869?
A. I think it had about got to its level then; I don't think it had any tendency downward then.
Q. Did you not buy some vessels of E. W. Hudson?
A. Yes; in the winter of 1866–'7.
Q. And sold them back to him?
A. Yes.
Q. Were they not, in fact, taken back on a foreclosure of mortgages?
A. No, sir; they were taken back on an arrangement between us.
Q. Had you not virtually lost everything you had put into them?
A. Yes.
Q. When were they returned to him?
A. In the winter of 1868–'9. In February & March, 1869, I think.
Q. What were those vessels?
A. The barque Fame and the schooner H. C. Winslow.

(Signed) W. W. HART.

Subscribed & sworn to before me this 4th day of November, A. D. 1871.

(Signed) HOYT DOSY,
Notary Public.

219 WILLIAM STEWART, a witness produced & sworn on behalf of the libellant, & examined by H. B. Brown, deposes & says :

I reside at Detroit. I have owned & been interested in vessels since the year 1848. I have been interested during that time in from 10 to 12 vessels. I am somewhat acquainted with vessels and their values at this port. I have acted as agent for others in buying & selling vessels; acted as ship-broker. I am acquainted with the market-value of vessel-property.

Q. Did you know the barque H. P. Bridge ?

A. I did.

Q. What was her value in the spring of 1869 ?

A. I should say from $24,000 to $25,000.

Cross-examined by W. A. Moore :

Q. Do you know of any vessel of about her class having been sold in 1869 ?

A. No ; I don't recollect of any.

Q. Or in 1868 ?

A. No, sir, I don't ; I know of one smaller ; the Columbian ; she was bargained for, at least.

Q. Do you know of any one that would have given 25,000 for the
220 H. P. Bridge in 1869 ?

A. I do not.

Q. Do you think she could have been sold in the market for $20,000, cash ?

A. Well, I couldn't tell; I hadn't seen her for a year, or nearly. I think I was aboard her since, about six months before she was lost. I am not certain what her outfit was when she was lost. If her outfit was good, I think she could have been sold for $24,000 or $25,000.

Q. Cash ?

A. Well, I do not know ; they generally sell vessels partly on time. I don't know of any being sold for cash.

Q. You have based your value, then, on sales at one-third down, & balance in one or two years, as vessels are usually sold ?

A. Yes, sir.

Q. Was not stock very much higher in 1866 & 1867, than in 1869 ?

A. Yes, I think it was, and have allowed for that. I think she could have been sold for $30,000 cash, in 1866 or 1867.

221 Q. What is the relative value of a five-year old vessel with a new one ?

A. I don't know.

Q. Well, half or three-quarters as much ?

A. Oh, it depends on how she is kept up. By grade she would be one-fourth less in value. As to the balance, it would depend very much on how she was kept up.

A. You had not been aboard her to examine her as to her condition and value ?

A. I had been aboard her, but not to examine her for that purpose.

(Signed) WM. STEWART.

Subscribed & sworn to before me this 4th day of November, A. D. 1871.

(Signed) HOYT DOST,
Notary Public.

STEWART MCDONALD, a witness produced & sworn on behalf of libellant, & examined by H. B. Brown, deposes and says:

I reside in Detroit. I am a ship-builder, & have been engaged in building vessels & repairing them since 1849. I was also in the business before then.

Q. Are you acquainted with the value of vessel-property?

A. I am somewhat.

222 Q. Have been for past 10 years?

A. For 10 years prior to 1869; since then I have not known much about them.

Q. Did you know the barque H. P. Bridge?

A. I have seen her.

Q. What would you consider her worth?

(Objected to form of question.)

Q. What was her market-value in the spring of 1869?

(Objected to on ground that question implies time.)

A. From $23,000 to $25,000.

Cross-examined by W. A. Moore:

Did not go aboard of her in 1869; believe I did in spring of 1868. Was then local inspector of Board of Lake Underwriters. Her tonnage was about 560 tons, carpenter's measurement; probably a quarter less by cust.-house measurement.

Q. Do you know of any vessel of about her class and burden having been sold in 1868 or '9 for cash or prompt pay?

A. I have no present recollection of any such sale.

Q. Upon what do you base your opinion of her value?

223 A. Upon probable cost of construction and outfit; also her fitness as a commercial marine vessel.

Q. And not upon any actual sale made?

A. Not upon any actual sale made within my knowledge.

Redirect-examination by H. B. Brown:

Q. What did you value her at for the Board of Lake Underwriters?

(Objected to as incompetent.)

A. At $27,000. I did not make a report on her, but if I had, I should have reported her, in 1868, at that figure.

Q. About how many vessels are sold on time to one sold for cash down?

(Objected to as incompetent & irrelevant.)

A. I don't know. I presume about one in five is sold for cash.

(Signed) STEWART MCDONALD.

Subscribed & sworn to before me this 4th day of November, A. D. 1871.

(Signed) HOYT DOST,
Notary Public.

224 JOSEPH B. SCOTT, a witness produced & sworn on behalf of libellant, & examined by H. B. Brown, deposes & says:

I live in Detroit; am a ship-broker.

Q. How many vessels have you bought & sold for yourself & others for the past 10 years?

A. About 7 or 8. I couldn't tell exactly without looking at my books.

Q. Have you known the market-value of vessels in this maket for the past five years?

(Objected to as too indefinite.)

A. That is something I couldn't get at without referring to my books. An A 2 vessel, I should judge, would be worth about a dollar a bushel for their carrying-capacity. That is, judging from the prices of vessels that I have on my books for sale; some a little over & some a little under.

Q. What was the value of the H. P. Bridge in the spring of 1869?

A. According to the price of vessels on my books for sale, she would be put at about $1 a bushel for her carrying-capacity; wouldn't vary much from that.

225 Cross-examined by W. A. Moore:

Q. When were you aboard the H. P. Bridge to examine her as to her condition & value?

A. I never was aboard her but once, & then not for that purpose. I have seen her at the docks. She looked well outside; seemed to be in good condition.

Q. Do you know of any vessel of about her class having been sold for cash or prompt pay, in 1868 or 1869?

A. I do not.

Q. You say she was worth about $1 a bushel, you suppose. Does that refer to a new vessel?

A. No, sir; to one about her age.

Q. What was her age?

A. About five years.

Q. What was the relative value of vessel-property in 1869 to that in preceding years?

A. It was about the same in 1868. In 1866 there would be a difference. That was a good year for vessels. They got more for their vessels that year.

(Signed) I. B. SCOTT.

Subscribed & sworn to before me this 4th day of November, A. D. 1871.

(Signed) HOYT POST,
Notary Public.

226 H. MORTON STRONG, a witness produced & sworn on behalf of the libellant, and examined by H. B. Brown, deposes & says:

I reside in Detroit; have been engaged in vessel business about 30 years. I have been interested in something over 60 vessels.

Q. Do you know the value of vessels in this market in the year 1869?

A. Well, it cost a good deal to build them. I built some. It cost about a dollar and a half a bushel to build them. I ought to be acquainted with the value.

Q. Did you know the barque H. P. Bridge?

A. I did.

Q. What was her value in the spring of 1869?

A. I should think she was worth about $28,000. I think in the spring

of 1869 Mr. Hudson offered me $100,000 for my two large vessels, which only carry 95,000 bushels. I think about $28,000 a fair cash equivalent.

Cross-examined by W. A. Moore:

Q. Do you know of any vessels of about her class being sold for cash in the year 1868 or 1869?

227 A. I sold the barque Sunny Cloud in 1868 or 1869 for $35,000. She carried about 20,000 bushels of wheat. I have got my pay. That was a very good sale. It was a monstrous sale. I sold to John Moore. I should like to sell the rest of them at that rate. I think about 21,500 bushels of corn was the most she ever carried.

Q. About what is the difference in carrying-capacity between wheat & corn?

A. About as 14 to 15; as 56 to 60.

Q. Do you know of any other vessels being sold?

A. There were very frequent sales made; I don't recollect particularly. There was a good deal of demand for vessels, but they all held them at high prices.

(Signed) H. N. STRONG.

Subscribed & sworn to before me this 4th day of November, A. D. 1871.

(Signed) HOYT POST,
Notary Public.

The examination is here adjourned until the 23rd day of November, A. D. 1871, at 9 o'clock a. m.

DETROIT, *Nov. 23rd*, 1871.

H. B. Brown appears for libellant; W. A. Moore appears for respondent.

228 WILLIAM H. LANGLEY, a witness produced & sworn on behalf of complainant and examined by H. B. Brown, deposes & says:

I live in Detroit, Michigan, and am a builder. I had some brick on board the H. P. Bridge at the time of her loss. There were 65,000 of them. They were billed to me at that amount. They were bought at Milwaukee, Wisconsin, & shipped there on the H. P. Bridge.

Q. What was the value of that brick at the time & place of shipment?

A. Twenty-two dollars a thousand, making $1,430 in all.

Q. They were shipped for Detroit?

A. Yes.

Q. What were they worth here at Detroit?

A. Forty dollars a thousand. They cost me that to get them here on the job. They were worth, however, about thirty-eight dollars per thousand here.

(The above testimony of this witness all objected to in season for the reason that he is not a party to the record, and that the testimony is irrelevant & incompetent.)

229 Cross-examined by W. A. Moore:

Q. From whom did you buy those bricks & when?

A. I don't recollect exactly the time. It was early in the spring of 1869. I bought them of Campbell and Colcloegh, I think.

Q. Do you know what the market-price of those brick was at Milwaukee at that time?

A. I bought them as low as I could. I don't know what the market-price was at Milwaukee.

Q. They were brick that were burned the preceding year, were they not?

A. Yes, sir.

Q. Do you know what the freight was from Milwaukee to Detroit?

A. I don't recollect. I didn't ship any more by boat.

Q. When you said they cost you $38 here, you meant later in the season & shipped by cars?

A. Yes, sir.

Q. Did you buy other brick?

A. Yes.

Q. From the same parties?

230 A. Yes.

Q. At what price?

A. Same prices then, $22.

Q. You don't know the freight you were to pay by the Bridge?

A. I do not recollect.

(Signed) WM. H. LANGLEY.

Subscribed & sworn to before me this 23rd day of November, A. D. 1871.

(Signed) HOYT POST,
Notary Public.

JOSEPH NICHOLSON, a witness produced & sworn on behalf of the libellant & examined by H. B. Brown, deposes and says:

I live in Detroit. I have owned and been interested in vessels for 10 years. I have been interested in 4 vessels.

Q. Are you acquainted with the prices at which vessels have been bought & sold in this market for the past five years?

A. I am.

Q. Do you know the market value of vessels?

A. I think I do.

Q. Did you know the barque H. P. Bridge at the time of her loss?

231 A. I did.

Q. What was her value in the spring of 1869?

A. Somewhere from $24,000 to $26,000 according to her outfit.

Cross-examined by W. A. Moore:

Q. Do you know of any vessel being sold of the size of the Bridge that season?

A. I do not remember of any just now.

Q. Would the H. P. Bridge in your judgment have brought $20,000 in cash at the time of her loss in this market?

A. I couldn't tell you what she would have brought.

Q. Could she have been sold for $18,000 cash in this market?

A. That I don't know.

Q. When, if ever, did you go aboard of her to examine her in reference to her value?

A. I don't know as I ever went aboard of her for that purpose. I have a general knowledge of the vessel.

Q. Is there not a vast difference in the value of vessels of the same burthen, age, & general appearance?

A. There is.

(Signed) JO. NICHOL SON.

Subscribed and sworn to before me this 23rd day of November, A. D. 1871.

(Signed) HOYT POST,
Notary Public.

232 ELON W. HUDSON, recalled for the libellant and examined by H. B. Brown, deposes and says:

Q. What was the freight upon those brick shipped by W. H. Langley?

A. It was either four or five dollars a thousand; I am almost positive it was five dollars.

Q. What was the freight on the oats?

A. Two cents a bushel.

Q. How many bushels?

A. About 34,000 bushels, it may have been 35,000 bushels. I have known her to carry 35,000 bushels. I am sure there was as much as 34,000 bushels.

(Above testimony objected to by Mr. Moore in season, as incompetent and irrelevant.)

(Signed) E. W. HUDSON.

Subscribed & sworn to before me this 23rd day of November A. D. 1871.

(Signed) HOYT POST,
Notary Public.

233 [L. S.] In the district court of the United States for the eastern district of Michigan. In admiralty, ss:

Before Wm. D. Wilkins a commissioner of said court.

IN THE CASE OF ELON W. HUDSON, OWNER OF the bark H. P. Bridge,
vs.
THE PROPELLER COLORADO, &C.

Depositions taken under order of reference made by said court in said case referring it to said commissioner to ascertain, compute, & report damages in said cause. Taken at Detroit, Mich'gan, before said comm'r, in presence of H. B. Brown, esq're, proctor for said libellant, and of Wm. A. Moore, esq., proctor for said claimant, said proctors respectively agreeing and stipulating that said depositions might be taken, read, and used as evidence on said reference; and waiving all objections thereto as to regularity or formality, and saving and receiving all objections as to relevancy or competency.

On behalf of the said libell't.

And the said ELON W. HUDSON, being duly cautioned & sworn in the above matter to testify the truth, the whole truth, and nothing but the truth, did thereupon depose and say, as follows:

234 The H. P. Bridge cost me something over $28,700; that is her first cost. I built her; when completed she rated "A 2." In the fall of 1854 I bought new sails for her to the amount of.... $1,903 50
In the spring of 1855 for new sails for her..... 1,271 42
For caulking her I expended..... 357 45
In the season of 1855 I expended on her for new sails..... 770 50

In the season of '67 I have no 'count of new sails, but I expended for caulking, carving new private signal or yawl.. 1,198 12
In 1868 I have no account to vo'der.
In the spring of 1869 I paid for caulking and rigging..... 586 16

(See margin next page, add $249.83.) $6,087 05

In building her I expended for new rigging and labor in fitting such rigging and in fitting sails the sum of $5,360.81.

The rest of her outfit was second-hand. Her tonnage was 551 $\frac{50}{95}$th tons, old measurement. She was in good condition at the time of her loss.

Cross-examined:

The items of her first cost was: her hull built by J. M. Jones, for $19,500 and odd dollars. I have my bills of rigging and sails at my
235 office, I presume, and will produce them. The hull, I think, was built by the ton or by contract in some shape, and not by the day. I don't recollect at how much per ton; the entry on my books does not show that sum; but I settled with Mr. Jones for the sum above named. The items of repairs of which I have testified are in consequence of old sails wearing out or blowing away, no result of collission or special damage that I am am aware of; only the result of wear & tear. The second-hand rigging and sails I allude to had been used on the bark Sheppard.

(Witness requested by claimant to produce his bills for rigging & sails, which he agrees to do if he can find them.)

Examination adjourned by consent to March 27th, 1872.

[L. S.] MARCH 27th, 1872.

On adjourned examination.

I wish to correct my evidence wherein I said I had no bills to render for '68. I find a bill for sails and rigging in that year amounting to $249.83.

(To Mr. Brown:)

My vessel was bound for Buffalo. Would have touched at De-
236 troit. Cannot state what the additional expense to me would have been if I had gone to Buffalo. It would have cost something more—the tow bill through the river and the additional wages of men, for instance. It might have occupied four days' time, and might have been six or ten days. The tow bill through the river I am positive about. That would have been $95.00. My expenses for wages and provisions would have been about $25.00 per day. My proportion of the expenses of discharging cargo, which would have had to have been deducted from the freight, would have been $200, and my tow bill at Buffalo would have been $7 to $12. No other expenses that I can think of. I have now here the bills of repairs asked for by Mr. Moore, which I now produce.

(Signed) E. W. HUDSON.

Sworn & subscribed before me March 27th, 1872.

WM. D. WILKINS,
U. S. Commr. E. Dist. Mich'n.

237 [L. S.] District court of the United States for the eastern district of Michigan.

ELON W. HUDSON
vs.
THE PROPELLER COLORADO.

Evidence of Philander B. Locke, John H. Montgomery, Samuel Gibson, and Charles S. Bidwell, taken before George J. Sicard, United States commissioner for the northern district of New York, at Buffalo, in said district, on the 29th day of February, 1872, Mr. Brown appearing for the libellant and W. Folsom for the respondent.

PHILANDER B. LOCKE, being duly sworn for the respondent, testified as follows:

I reside at Buffalo; am in the ship-chandlery business, firm of Locke, Austin and Spaiks; business in 1869 was the same. In 1868 I was sailing as master.

Ques. In the year 1869, in the spring, what was it worth to fit out a vessel on the lakes, a complete outfit beyond the hull & spars?

238 (Objected to as irrelevant.)

Ans. It would depend upon the size of the vessel. I know what it would cost, depending on the size.

Ques. What would it be worth to fit out a bark-rigged vessel of about (550) five hundred and fifty tons, old measurement, at that time?

(Same objection; also as incompetent.)

Ans. About eight thousand dollars would cover everything, not including paint. We do not consider that as part of ship-chandlers' figures in an outfit. I am speaking of an outfit for an A 1 vessel.

On being cross-examined the witness said:

I commenced ship-chandlery business in spring of 1869. I have furnished three complete outfits to vessels since then, several partial outfits. I include cabin furniture, capstan anchor, not yards or mast. That is carpenter's business. Prices now compare about the same as in spring of 1869. Some things are higher, some lower; the average about the same.

(Signed) PHILANDER B. LOCKE.

Subscribed & sworn before me by the above-named witness this 29th day of February, 1872.

(Signed) GEO. J. SICARD,
U. S. Commissioner, N. D. of N. Y.

239 JOHN H. MONTGOMERY sworn for respondent:

I reside in Buffalo; am a ship-chandler, and have been since 1867.

Ques. Do you know what it was worth in the spring of 1869 to fit out complete an A 1 bark-rigged vessel of about 550 tons burthen, old measurement, on the lakes?

(Objection as incompetent and irrelevant.)

Ans. I do.

Ques. What was it worth?

(Same objection by counsel for libellant.)

Ans. I could give him a good outfit—do it good—for seven thousand five hundred dollars; everything complete except the sails. The sails

on a vessel of that description would be worth about thirteen hundred dollars. I have owned vessels considerably for twenty-eight years, & am acquainted with the value of vessels on the lakes; have bought and sold a great many. An A 1 vessel for the first three years will depreciate ten per cent. a year. In buying and selling it is usually reckoned so. For the next two years the depreciation would be seven to eight per cent. a year.

240 On being cross-examined by counsel for libellant:

I have fitted out complete some (15) fifteen or twenty (20) vessels in the last three years. I have fitted out four or five that were over five hundred tons. Prices were about the same in 1869 as in 1872. I mean a vessel would depreciate ten per cent. a year for the first three years. A vessel that cost thirty thousand dollars, an A 1 bark, ought at the end of five years to be worth twenty thousand dollars.

(Signed) JOHN H. MONTGOMERY.

Subscribed and sworn before me by the above-named witness this 29th day of February, 1872.

(Signed) GEO. J. SICARD,
United States Commissioner, North. Dist. N. Y.

SAMUEL GIBSON, being sworn for the respondent:

I reside in Buffalo; am a ship-builder; have been for twelve years; was of the firm of Hitchcock & Gibson.

Ques. Do you know what, in the spring of 1869, was the fair cash-value for building an A 1 vessel of about 550 tons burthen, old measurement?

241 Ans. I do. I would build it for ($33) thirty-three dollars per ton. That was a fair cash price at that time. There is a difference between credit and cash prices of about ($1) one dollar per ton.

Ques. Do you know what it was worth at that time to build for cash an A 2 vessel?

Ans. I do; it was worth $3 per ton less than an A 1 vessel.

On being cross-examined by counsel for libellant:

I have been in the business twenty-eight years. I do not include in this the cost of the outfit. I include merely the carpenter's work and blacksmith's work; also the mast and spars and two coats of paint. There is a difference in the cost of A 1 vessels. I mean that $33 was the average cost per ton of A 1 vessels at that time; this is per ton old measurement. Timber is higher now than it was in 1869. From 1864 to 1869 there was a gradual increase in price of timber.

(Signed) SAMUEL GIBSON.

242 Subscribed & sworn before me by the above-named witness this 29th day of February, 1872.

(Signed) GEO. J. SICARD,
United States Commissioner, N. D. of N. Y.

CHARLES S. BIDWELL sworn for respondent:

I reside in Buffalo, N. Y. My business has been ship-building for thirty years.

Ques. Do you know what, in the spring of 1869, was the fair cash-value for building an A 1 vessel of five hundred and fifty tons burthen, old measurement?

Ans. I do. I should put it at $33 to $34 per ton. That was a fair cash price at that time. The difference between cash and credit prices of building such a vessel would be about $1 per ton; think it would average that. In $33 or $34 per ton I include all the carpenter's and joiner's work and the blacksmith's work up to the rail & on the
243 rail, and one coat of paint or oil, whatever they proposed. I include the mast & spars. I don't know of my own knowledge what the actual depreciation per year of an A 1 vessel is. I don't see how any one could tell.

Ques. Do you know what is the custom of trade with reference to allowing for the depreciation of vessels in buying and selling on the lakes?

(Objection by libellant's counsel as incompetent and irrelevant.)

Ans. I understand there is a custom of that kind. I understand the depreciation to be ten per cent. a year, until she lowers her class. After that the depreciation would be greater.

On being cross-examined the witness said:

I understand that to be the general rule; I do not know it from buying and selling vessels myself. I mean I know it from what I have heard others say, and it is my opinion vessels would depreciate to that extent. I have not bought & sold any vessels myself in the last ten years, but
244 have built and sold. I have built for myself & for others. I don't include in my estimate of cost the cost of the outfit.

(Signed) CHARLES S. BIDWELL.

Subscribed and sworn before me by the above-named witness this 29th day of February, 1872.

(Signed) GEO. J. SICARD,
United States Commissioner, North. Dist. N. Y.

245 [L. S.] ELON W. HUDSON
vs.
PROPELLER COLORADO.

STEPHEN W. KIRBY sworn.

Examined by Mr. Moore:

Q. What were you engaged in in May, '69?

A. I was in the vessel-business generally.

Q. You have been engaged in the building of vessels how long?

A. I have been all my life-time at the business.

Q. What was an A No. 1 vessel worth new in this market of from five to six hundred tons?

A. About sixty dollars; the total cost 55 to 60.

(Testimony objected to.)

Q. What would an A No. 2 be worth?

A. About 15 or 20 per cent. less.

Q. What is the depreciation of a vessel ordinarily of that class in 5 years?

A. About 10 per cent. a year.

Q. In the first five years?

A. Yes, sir; 10 years would use her up.

Q. What was the ship-builder's price per ton of building a vessel in the spring 69 of A No. 1 class?

246 A. I run from 35 to 40; they took them as low as 33; 35 or 36 would be the average in the spring, '69.

Cross-examination by Mr. Brown:

Q. Have you been engaged in the building of vessels yourself?
A. Yes, sir.
Q. Were you in '69?
A. I was.
Q. Here?
A. In New York City.
Q. How many years were you engaged building there at that time?
A. 2 years.
Q. Where do you live now?
A. In the city.
Q. Are you building vessels?
A. Yes, sir.
Q. How many years have you built vessels on the lakes?
A. Since '53, except the 2 years I was down to New York.
Q. You didn't know anything about the Bridge?
A. Nothing in particular. I only recollect the vessel; have a general idea of how she looked.

247 Q. Are not some vessels better built and worth more per ton than others?
A. Oh, yes, there is the greatest difference in that respect.
Q. Is there not that same difference in A 1 vessels?
A. Yes, sir; what they pass as A 1.
Q. Is there in A 2?
A. Yes, sir.
Q. What is the price you give; does it apply to the best class or to the lower class of A 1's and 2's?
A. It was what they called A 1 vessels at the time; every one makes a contract for an A 1, whether he gets that or not.
Q. Doesn't refer to any particular class of A 1's?
A. Oh, no.
Q. Might not a first-rate A 1 be better worth more than the price you make?
A. Oh, yes, it may.
Q. So with regard to an A 2?
A. Yes, sir.
Q. How high have you seen them worth?
A. Worth $50 a ton.
Q. Seen them worth any more than that?
A. No, I don't think that I have; that is about the highest price I ever knew.

248 Q. The price of the worth of a vessel is affected a good deal by the business?
A. Yes, sir.
Q. One year the vessel may be worth a good deal more than the same vessel another year?
A. Yes, sir.
Q. (By Mr. Moore:) When you are giving your estimate of the value, has it been of a good class of the class you have mentioned?
A. Yes, sir, good quality.
Q. Good quality of the class you have mentioned?
A. Yes, sir.
Q. Was there any unusual demand in the spring of '69 for vessels?
A. I don't recollect how that was; I don't think there was.

249 PETER J. RALPH sworn:

Examined by Mr. Moore:

Q. Where do you live?
A. In Detroit; I am a vessel-owner.
Q. Did you build a vessel in '68 or '9?
A. Yes, sir.
Q. Of about what burthen?
A. I don't know; 419 or 519 tons, new measurement, I think.
Q. Is that less or more than old measurement?
A. That is less than old measurement.
Q. What was her class?
A. A 1.
Q. Do you think the cost-price of an A 1 vessel of between 500 & 600 tons old measurement the fair market-value of a new vessel in the fall of '68 or spring of '69?
(Objected to.)
A. No, I don't.
Q. Do you know what it cost to build such a vessel here in the spring of '69, an A 1 vessel?
A. No, sir.
Q. Of about that size on the winter of '68 & '69?
250 A. I don't.
Q. Do you in the season of '68?
A. Yes, sir.
Q. What time was she built in '68?
A. She was launched the 18th of April, I think, '68.
Q. What was the cost per ton of the vessel that you built?
(Objected to.)
A. I don't know.
Q. What was the entire cost of the vessel?
A. $31,000; in the neighborhood of that; it won't vary but a few hundred dollars either way.
Q. How is vessel-stock compared with that in '67?
A. That I don't know; I can't say.
Q. Do you know what the depreciation of a vessel is ordinarily for 5 years?
A. No, I don't; it is a pretty hard thing to get at.

Cross-examination by Mr. Brown:

Q. What was this vessel you built?
A. The C. H. Hurd.
251 Q. Do you know whether it was larger or smaller than the Bridge?
A. That I could not say.
Q. Were you acquainted with the bark H. P. Bridge?
A. Not much. I have been on their decks.
Q. What would you say that the H. P. Bridge, judging from her appearance, size, and capacity, was worth in May, 1869?
A. Not; I do not.
Q. Can you give your estimate?
A. No; I could not.
Q. Can you give any estimate?
A. No, sir.
Q. What would you think a well-built bark of 550 tons, old measurement, 5 years of age, would be worth in May, '69?
A. I don't know. I could not say.

JAMES M. JONES, recalled:

Q. (By Mr. Moore:) What was the class of the Bridge when she first came out?

A. A 2.

Q. What was her fit-out, old or new?

252 A. Most of it was old, I think; came off another vessel. A portion of it, any way. I don't know how much. I didn't fit her out. I know some of it came off another vessel.

No cross-examination.

In the district court of the United States for the eastern district of Michigan.

IN THE CASE OF ELON W. HUDSON, OWNER bark H. P. Bridge,
vs.
THE PROPELLER COLORADO, & HER ENGINES, boats, &c. } In admiralty.

To the Hon. John W. Longyear, judge of the said court:

It having been by a decree of said court, made and entered in said cause, referred to the undersigned, a commissioner of said court, to ascertain, compute, & determine the damages sustained by the libellant in said cause, to take such testimony as might be offered in relation thereto, and to report such damages so ascertained to said court,

253 and the undersigned having carefully examined the testimony taken on behalf of the libellant & respondent, and having heard and maturely considered the argument submitted by counsel for said parties respectively in reference to said damages, doth now report: That there is due to said libellant, Elon W. Hudson, for and on account of the damages by him sustained on occasion of the collision of said propeller Colorado with his said bark H. P. Bridge, the sum following, that is to say:

1. For the value of the bark H. P. Bridge at time of loss.	$25,000 00
2. For value of 65,000 brick on board at time of loss.....	1,430 00
3. For freight on said brick at $5 per M.....	325 00
4. For " " cargo of oats on board at 5 cents per bushel	1,700 00
Total amount of ascertained damages.....	$28,455 00
Add interest from May 11th, date of collision, to date of report, 2 years & 11 months.....	5,809 70
	$34,264 70

Which said sum I respectfully report as the damages sustained

254 by the said libellant, on occasion of the collision aforesaid.

I have filed herewith the testimony taken and the arguments submitted by counsel for the parties respectively.

All of which is respectfully submitted.

April 8, 1872.

[L. S.] (Signed) WM. D. WILKINS,
U. S. Commissioner E. Dist. Mich.

(U. S. commissioner's fees on reference:) Drafting report & taking testimony, 14 folio @ 20 c., 2.80; 10 oaths, 10 c.; fil'g 5 papers @ 10 c., 60; March 11 & 27, April 8, attending re-reference on tak'g. testimony & making report, 3 days at $3, 9.00—Total $12.40.

(Endorsed:) Filed April 13, 1872. D. I. Davison, clerk.

255 Dist. court of the U. States for the eastern dist. of Mich. In admiralty.

ELON W. HUDSON
vs.
PROP. COLORADO.

And now comes Charles Ensign, George W. Holt, by W. A. Moore, their proctors, and except to the report of the commissioner to whom it was referred to assess libelant's damages suffered by the collision set forth in the libel filed in said cause, and particularly set forth and allege the following reasons:

1st. That the finding of the commissioner as to the value of the bark is not sustained by the evidence, in this:

It is not based on the market cash value of the vessel, but estimated price for which she could be sold on time.

That the witnesses did not give their opinions on a personal examination and knowledge, but upon estimate of condition and value.

That no sufficient deduction was made by the commissioner for
256 depreciation by reason of age under the testimony given.

That the finding of the commissioner is above the fair cash value in open market under the evidence.

2d. No deduction was made by the commissioner of the necessary expenses for the completion of the voyage and delivery of the cargo, and the commissioner's finding as to the freight there pending is not sustained by the evidence, but is too great in amount.

3rd. That the report is in other respects incorrect & insufficient.

(Signed) W. A. MOORE,
Proctor for Respondent.

DETROIT, *April 20th*, 1873.

(Endorsed:) Filed April 22, 1872. D. I. Davison, clerk.

257 At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district-court room in Detroit, on Monday, the seventh day of May, in the year of our Lord one thousand eight hundred and seventy-two; present, the honorable John W. Longyear, district judge.

ELON W. HUDSON
vs.
PROPELLER COLORADO, HER ENGINES, &C. } On a libel for collision. In admiralty.

On reading and filing the report of William D. Wilkins, United States commissioner, to whom it was referred to assess and report the damages sustained by the libelant in said cause, by which there is reported due to the libellant for his damages the sum of thirty-four thousand two hundred sixty-four dollars & seventy cents, ($34,264.70;) and on reading and filing the exceptions of claimant thereto, and on hearing the arguments of the respective parties, it is ordered that claimant's second exception be sustained to the amount of four hundred eighty-nine &
258 $\frac{50}{100}$ dollars & interest thereon ninety-nine & $\frac{94}{100}$ dollars, in all five hundred eighty-nine dollars and forty-four cents ($589.44) only, and that the residue of said exceptions be, and the same are hereby, overruled and disallowed. And it is further ordered, adjudged, and

decreed that the said libellant do recover of the claimants in this cause the sum of thirty-three thousand six hundred and seventy-five dollars and twenty-six cents, ($33,675.26,)with interest thereon from April 8th, 1872, the date of the commissioner's report, together with costs of suit to be taxed. And it is further ordered that the claimant recover of said libellant his costs upon the exceptions to the said commissioner's report to be taxed.

And it appearing that the said propeller Colorado has been duly bonded by George W. Holt, as claimant thereof, with Edmund Trowbridge and John Pridgeon, as sureties, by their bond or stipulation in the sum of forty-five thousand dollars, conditioned to abide the decree of this court, and to pay the amount thereof, and assenting that unless they should so do, execution should issue against them therefore,

259 now on motion of Newberry, Pond & Brown, proctors for said libellant, it is further ordered, adjudged, and decreed that judgment be, and the same is hereby, entered up against the said George W. Holt, principal, and Edmund Trowbridge and John Pridgeon, sureties as aforesaid, for the aforesaid sum of thirty-three thousand six hundred seventy-five dollars and twenty-six cents, ($33,675.26,) together with interest & costs as aforesaid. And it is further ordered that unless said damages, together with interest and cost as aforesaid, shall be paid into the registry of this court within twenty days from this date, execution do issue therefor in due form against the said principal and sureties in said bond or stipulation.

Thereupon Messrs. Moore & Griffin, proctors for claimant, give notice of their intention to take an appeal from said decree to the circuit court of the United States for the eastern district of Michigan, and the court fix the amount of the bond to be given by said claimant on such appeal at at the sum of fifty thousand dollars, and twenty days are gr'nted within which to perfect such appeal.

260 In the district court of the United States for the eastern district of Michigan. In admiralty.

ELON W. HUDSON }
vs.
PROP. COLORADO. }

To the honorable the circuit court of the United States for the eastern district of Michigan:

The appeal of Charles Ensign, George W. Holt, claimants and respondents in the above-entitled cause, respectfully shows that on the 27th day of May, 1872, a decree was entered in the district court of the United States for the eastern district of Michigan, in admiralty, in favor of the above-named libellant, and against the said propeller Colorado, and these respondents & appellants, her owner', for the sum of $33,675$\frac{26}{100}$ and costs of suit to be taxed; that these appellants are advised and insist that the said decree is erroneous, inasmuch as it decreed that the said propeller Colorado and her officers and crew were at fault, by which the collision set up in the libel filed in said cause occurred, &

261 *and* that the value of the barque H. P. Bridge was $25,000.00, whereas in truth and in fact, as these appellants allege, the said propeller Colorado, her officers and crew, were not at fault, but the said barque Bridge, her officers and crew, were at fault, and that said collision and damage were caused by the fault of the barque H. P. Bridge, her officers & crew, and the value of the said barque was not $25,000.00, as adjudged in said decree. And these appellants, for these and other

reasons, appeal from the whole of said decree in favor of said Elon W. Hudson, to the next circuit court to be held in said district, and by said appeal they intend to offer such new proofs as they may deem necessary; and they pray that the said decree, and every part thereof, may be reversed with costs, or such other decree made as to the said circuit court shall seem just, and the appellee may be condemned to pay these
262 appellants and respondents their costs and damages in the premises.

(Signed) CHARLES ENSIGN,
GEORGE W. HOLT,
By W. A. MOORE, *Proctor.*

MOORE & GRIFFIN,
Proctors for Appellant.
W. A. MOORE,
Advocate.
JUNE 4*th*, 1872.

STATE OF MICHIGAN,
Wayne County, ss :

On this 5th day of June, A. D. 1872, before me personally came Samuel J. Kilso, and being duly sworn, said that at the date hereof he served the within appeal by delivering a true copy hereof to Messrs. Newberry, Pond & Brown, at their office, Detroit, the said Newberry, Pond & Brown being the proctors for libellant in the within-entitled cause.

(Signed) S. J. KILSO.

Subscribed and sworn to before me this 5th day of June, A. D. 1872.
(Signed) C. C. HICKEY,
Notary Public.

(Endorsed :) Filed June 5th, 1872. D. I. Davison, clerk. By John Moore, depy.

263 Circuit court of the United States for the sixth circuit and eastern district of Michigan. In admiralty.

Whereas an appeal has been taken to this court from the district court of the United States for the eastern district of Michigan, in a certain cause wherein Elon W. Hudson, owner of the barque H. P. Bridge, was libellant, against, the propeller Colorado, her engine, machinery, &c., Charles Ensign, and Gerge W. Holt, claimants, by the said claimants, and the said appellants have been ordered to give security by the stipulation of themselves, and competent sureties in the sum of fifty thousand dollars, for the payment of all damages and costs on the appeal in this court & in the Supreme Court.

Now, therefore, the stipulators undersigned hereby stipulate, in the sum of fifty thousand dollars, to pay all damages and costs on the appeal in this cause & in the Supreme Court, in case such appeal shall intervene.

264 (Signed) CHARLES ENSIGN.
" GEORGE W. HOLT.
" JOHN PRIDGEON.
" EBER WARD.
" ALFRED CHESEBOROUGH.

Taken and acknowledged this eleventh day of May, A. D. 1872, before me,

D. I. DAVISON,
U. S. Comm'r East. District of Michigan.

EASTERN DISTRICT OF MICHIGAN, *ss:*

John Pridgeon and Eber Ward, of the city of Detroit, in said district, two of the stipulators above named, being duly and severally sworn, each for himself, doth depose and say that he is worth the sum of one hundred & fifty thousand dollars after the payment of their just debts.

(Signed) JOHN PRIDGEON.
" EBER WARD.

Subscribed & sworn to before me this 12th day of June, A. D. 1872.

D. I. DAVISON,
U. S. Comm'r East. Dist. Mich.

(Endorsed:) Filed June 15th, 1872. D. I. DAVISON, clerk.

265 EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Darius I. Davison, clerk of the district court of the United States for said district, do hereby certify the above and foregoing document and record to be the record in appeal in said court in the case Elon W. Hudson, libellant & appellee, against the propeller Colorado, her engine, &c., Charles Ensign, and Geo. W. Holt, claimants and appellants, being the original process, pleadings, and bond, except the libel and depositions, except the depositions taken before Geo. Gorham, at Buffalo, copies of which are returned, and true copies of all interlocutory and final orders and decrees of the district court in said cause.

Witness my hand and the seal of said court, at Detroit, this first day of August, A. D. 1872.

[L. S.] D. I. DAVISON, *Clerk.*

266 Transcript on appeal from the district court to the circuit court, filed in circuit-court clerk's office, August 1, 1872.

ADDISON MANDELL, *Clerk.*

267 United States circuit court for eastern district of Michigan.

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court room, in the city of Detroit, on Wednesday, the eleventh day of December, A. D. one thousand eight hundred and seventy-three; present, honorable Holmer .E Emmons, circuit judge.

ELON W. HUDSON, OWNER OF BARQUE H. P. Bridge, libellant & appellee,
vs.
THE PROPELLER COLORADO, CHARLES ENsign, and George W. Holt, claimants & appellants.

} On appeal from the U. S. district court. In admiralty.

This cause coming on to be heard on appeal from the district court of the United States for the eastern district of Michigan, is argued in part by Mr. Moore in favor of appellants, and by Mr. Brown in favor of appellee, and continued for further hearing.

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment on Thursday, the twelfth day of December, A. D. 1872; present, honorable Holmer H. Emmons, circuit judge.

268 ELON W. HUDSON, OWNER OF BARQUE H. P. Bridge, libellant & appellee, *vs.* THE PROPELLER COLORADO, CHARLES ENSIGN, & George W. Holt, claimants & appellants. } On appeal from U. S. district court. In admiralty.

This cause again coming on to be heard on appeal from the district court of the United States for the eastern district of Michigan, in admiralty, is argued in part and continued for further hearing.

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court room, in the city of Detroit, on Friday, the thirteenth day of December, A. D. one thousand eight hundred and seventy-three; present, honorable Holmer H. Emmons, circuit judge.

ELON W. HUDSON, OWNER OF BARQUE H. P. Bridge, libellant & appellee, *vs.* THE PROPELLER COLORADO, CHARLES ENSIGN, & George W. Holt, claimants & appellants. } On appeal from U. S. district court. In admiralty.

269 This cause again coming on to be heard on appeal from the district court of the United States for the eastern district of Michigan, in admiralty, the arguments of counsel are concluded, and the cause submitted for decision; and it is ordered that the parties to this case have until the fifteenth day of February in which to submit and file written briefs therein, and that libellant has leave to amend his libel without prejudice and without requiring answer from respondent.

Afterwards, to wit, on the 20th day of December, A. D. 1872, said libellant came in court and filed amendments to his said libel in the words and figures following, to wit:

The circuit court of the United States for the eastern district of Michigan. In admiralty.

ELON W. HUDSON *vs.* THE PROP. COLORADO.

And now comes the libellant, by Newberry, Pond & Brown, his proctors, and, by leave of the court first obtained, files the following amendments to his libel in the said cause:

1st. In the second article of the said libel erase the words
270 "and as she came nearer," and insert in their place the following words: "as she approached so near that a collision became imminent, and at the same time."

2nd. After the words "had not the proper lookout properly stationed," insert "was not constructed with proper facilities for signalling the engineer."

NEWB., POND & BROWN,
Libellant's Proctors.

Filed in clerk's office Dec. 20, 1872.

A. MANDELL, *Clerk.*

Afterwards, to wit, on the 13th day of February, A. D. 1873, the claimants' proctors filed a notice, of which the following is a copy, viz:

LAW-OFFICE OF MOORE & GRIFFIN,
No. 5 Moffat Block, Detroit, Feb'y 13th, 1873.

ADDISON MANDELL, Esq.:

DEAR SIR: We have this day filed brief of Mr. Hibbard in the case of Hudson vs. The Colorado, as required by order of the court, with Judge Emmons.

Respectfully, yours,

W. A. MOORE.

Filed in clerk's office Feb'y 13, 1873.

A. MANDELL, *Clerk.*

271 *Decree & judgment.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room in the city of Detroit, on Monday, the 31st day of March, in the year one thousand eight hundred and seventy-three; present, honorable Holmer H. Emmons, circuit judge.

In admiralty.

ELON W. HUDSON, OWNER OF BARK H. P. Bridge, libellant & appellee,
vs.
THE PROPELLER COLORADO, CHARLES Ensign, & George W. Holt, claimants and appellants.

An appeal from the district court of the United States for the eastern district of Michigan. In admiralty.

This cause having been fully argued by counsel on either side, and the record of the court below being seen and inspected and fully considered, it is now by this court considered, adjudged, and decreed that the judgment and decree of the district court aforesaid be, and the same is now, in all things affirmed.

And it is further considered, adjudged, and decreed by this court that the said libellant do recover of and from the said Charles Ensign and George W. Holt, the claimants and appellants, and also of and against their sureties on appeal for said appellants, the sum of thirty-five thousand nine hundred and eighty-seven dollars and nine-
272 teen cents ($35,987.19) damages, being the sum for which judg-

ment or decree in the court below was awarded, with interest to this day, together with said libellant's costs of writ, both in the district court and in this court, to be taxed by the clerk of this court.

Claim & allowance of appeal.

And thereupon, on said 31st day of March, A. D. 1873, the said claimants and appellants claimed an appeal in open court, and an order entered in the words following, to wit:

And now come the said Charles Ensign and George W. Holt, claimants and appellants in the above-entitled cause, and claim an appeal from the judgment and decree of this court therein to the Supreme Court of the United States, which appeal is now allowed by this court, and a bond ordered in the penal sum of fifty thousand dollars from said claimants and appellants to said libellant and appellee.

273 *Appeal.*

In the Supreme Court of the United States.

ELON W. HUDSON, LIBELLANT AND APPELLEE,
vs.
PROPELLER COLORADO, CHARLES ENSIGN, & George W. Holt, claimants & appellants.

On appeal from the circuit court of the United States for the eastern dist. of Mich. In admiralty.

To the honorable the Supreme Court of the United States:

The appeal of Charles Ensign and George W. Holt, the above named claimants and appellants, respectfully shows:

That on the 31st day of May, 1869, the above-named Elon W. Hudson filed his libel in the district court of the United States for the eastern district of Michigan against the propeller Colorado, her engine, &c., in admiralty, claiming damages in the sum of thirty thousand dollars and upwards, by reason of a collision between the said propeller Colorado and the barque H. P. Bridge, the property of said Hudson; that an answer was filed, proofs were taken, and a hearing had in the
274 said district court, and a decree entered therein by the judge thereof; that the said claimants and appellants appealed to the circuit court of the United States for said district; that a rehearing was had of said cause in the circuit court, and on the 31st day of March, A. D. 1873, a decree was entered in said cause in said circuit court, and by the judge thereof, in favor of the said Hudson, libellant & appellee, and against the said Ensign and Holt, claimants, of the said propeller Colorado, for the sum of thirty-five thousand nine hundred and eighty-seven dollars and nineteen cents; that the said Ensign and Holt, claimants and appellants, deeming themselves aggrieved by said decree last named, and believing such decree to be erroneous, have taken an appeal, and do therefore appeal, from the said decree of the circuit court, and from the whole and every part of said decree, to the Supreme Court of the United States; and the said claimants and appellants respectfully pray that the said decree of the said circuit court, together with the libel, answer, pleadings, evidence, and proceedings in said cause, may be sent to the Supreme Court of the United States without

delay, and that the said Supreme Court will proceed to hear said cause anew, and that said decree of the said circuit court, and every part thereof, may be reversed, vacated, and set aside, and a decree
275 made dismissing the libel of the said Hudson, with costs of suit to be taxed in favor of said appellants, or for such other order and decree as shall be just and right in the premises.

W. A. MOORE,
Solicitor for Appellant.
GEO. B. HIBBARD,
Of Counsel.

DETROIT, *April* 8, 1873.

(Endorsed:) We hereby accept service of the within by copy duly delivered.

NEWB., POND & BROWN,
Libellant's Proctors.

DETROIT *Apl.* 8, 1873.

Filed in clerk's office April 9, 1873.

A. MANDELL, *Clerk.*

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277 Supreme Court of the United States.

ELON W. HUDSON, LIBELLANT & APPELLEE,
vs.
PROPELLER COLORADO, CHARLES ENSIGN, & George W. Holt, respondents and appellants.

On appeal from the circuit court of the United States for the eastern district of Michigan. In admiralty.

Know all men by these presents that we, Charles Ensign and George W. Holt, of Buffalo, New York, as principals, and John Pridgeon, Eber Ward, and Alfred Cheesebrough, of Detroit, Michigan, as sureties, are held and firmly bound unto Elon W. Hudson, of Detroit, Michigan, in the sum of fifty thousand dollars, to be paid to the said Hudson, his executors or administrators, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals, dated this first day of May, 1873.

Whereas the above-named Ensign & Holt have prosecuted an appeal to the Supreme Court of the United States to recover the decree rendered in the above-entitled cause by the said circuit court of the
278 United States for the eastern district of Michigan,

Now, therefore, the condition of this obligation is such that if the above-named Ensign and Holt shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their appeal, then this obligation shall be void, otherwise to remain in full force and virtue.

CHARLES ENSIGN. [L. S.]
GEORGE W. HOLT. [L. S.]
JOHN PRIDGEON. [L. S.]
EBER WARD. [L. S.]
ALFRED CHEESEBROUGH. [L. S.]

We hereby approve the within bond and of the sureties therein named.

NEWB., POND & BROWN,
Libellant's Proctors.

MAY 22*d*, 1873.

I approve of the security of the within bond.

A. MANDELL, *Clerk.*

MAY 22*d*, 1873.

Filed in open court May 22d, 1873.

A. MANDELL, *Clerk.*

279–281

282 (Endorsed:) No. 5058. In the circuit court of the United States for the east. dist. of Michigan. E. W. Hudson, libellant & appellee, vs. Propeller Colorado. Charles Ensign & George W. Holt, respondents & appel'ants. Filed in clerk's office May 22d, 1873. A. Mandell, clerk.

283 CASE OF PROPELLER COLORADO.

Opinion of Judge Langson, in district court, on final hearing July 18, 1871.

The collision occurred between eleven and twelve o'clock at night on the eleventh day of May, 1869, on the westerly side of Lake Huron, opposite Saginaw Bay, and about midway between Point au Barques and Thunder Bay lights.

The bark was bound down on a voyage from Milwaukee to Detroit and Buffalo, with a cargo of upward of 30,000 bushels of oats, and 65,000 bricks, and the propeller was bound up on a voyage from Buffalo to Chicago with about one-third of a cargo of general merchandise.

The wind was about south. For some time before the collision the bark had been sailing by the wind, on the starboard tack, close-hauled, her course being about southeast by east, which course she kept until just a moment before the collision, and after it had become inevitable, when her wheel was put hard astarboard. The course of the propeller was about north-northwest, which course she kept until a very short time before the collision, when her wheel was ordered hard aport.

284 Before that order had been fully obeyed, however, it was countermanded, and the wheel was ordered hard astarboard, which latter order was fully obeyed, and the collision occurred almost immediately after.

The propeller struck the bark near the mainmast, on the starboard side, at an angle variously estimated by the witnesses from forty-five degrees from the bark's stem to a right angle. The truth is undoubtedly somewhere between the extremes of those estimates, and probably nearer to forty-five degrees than a right angle.

The weather was foggy; and at the time of the collision, and for about an hour before, the fog was so thick that it was difficult to distinguish a vessel's lights at any considerable distance. From the time the fog set in, and up to the collision, the bark had blown her fog-horn, and the propeller had blown her steam-whistle, regularly, as required by law, and just as the propeller was seen, coming down upon the bark, by those in charge of the latter, the bell was also rung on the bark.

By a custom of the lakes, adopted and acted on by all sailing-vessels, and well understood by all experienced and competent mariners,
285 one blast of the fog-horn signifies that the vessel from which it is sounded is on the port-tack, close-hauled; and two blasts, given in quick succession, signify that the vessel is on the starboard-tack, close-hauled. There are other modifications of these signals, but a notice of them here is unnecessary for the purposes of this case. By these signals, and taking notice of the direction of the wind, the course and direction of approaching vessels can always be determined with reasonable certainty by the exercise of that care and diligence requisite in such situations. The bark being on the starboard-tack, sounded her fog-horn in double blasts, pursuant to this custom.

On account of the fog, the bark had taken in her light sails and her foresail, and at the time of the collision was proceeding at a slackened speed. The propeller's speed had also been slackened when the fog set in down to from three to five miles an hour, as variously estimated by the witnesses on the part of the propeller, and from five to six miles an hour, as estimated by the witnesses on the part of the bark.

The proof shows that the fog-horn of the bark could be heard against the wind at least half a mile. The propeller's whistle was heard on board the bark several minutes, according to the testimony of the
286 master of the bark, nearly an hour before the collision. The bark's horn was not heard, or, if heard, was not distinguished from other horns blowing in the vicinity during the same time, or, if heard and distinguished, was not reported to or noticed by the mate of the propeller, who was in charge of her navigation at the time, until a very short space of time—by the highest estimates not to exceed one minute and a half, but more probably not to exceed one minute, before the collision occurred.

When the bark's horn was first heard on board the propeller it sounded dead ahead, and but a very short distance off. It was understood on the propeller, when first heard, to be a single blast, indicating, as we have seen, a sailing-vessel on the port-tack, close-hauled. It was then that the order hard aport was given on the propeller, which order would have been the correct one if the horn had been correctly understood. Before this port order had been fully obeyed, however, and when the wheel had been put only about half of one turn over, the horn was again heard, when it was correctly understood to be two blasts. It was then that the order to port was countermanded, and the order hard astarboard was given.

287 When the horn was first heard, the officer in charge of the deck of the propeller was standing in front of the pilot-house, and where he could not signal the engineer. As he gave the order to port after first hearing the horn, he started and ran up to the pilot-house, where he could signal the engineer, and at once signalled that officer to stop the engines, which was done as soon as that order could be obeyed, so that the engines were stopped between the times that the order to port and the order to starboard were given. Immediately upon giving the order to starboard, after hearing the two horns, the officer signalled to back the the port-engine, in order to aid in swinging the propeller to port as rapidly as possible, but just at this moment, seeing the green light of the bark right under the bows of the propeller, or not to exceed fifty to seventy-five feet off, he signalled to back both engines, both of which orders were obeyed. The time between the giving of the order to back with both engines and the collision is variously estimated by the witnesses, some putting it as long as one minute, and some putting it immediately. But taking all the circumstances into consideration, especi-

ally the close proximity of the bark when this order was given, not to exceed seventy-five feet off, and the headway the propeller
288 evidently still had when the collision occurred, judging from the severity of the blow, it must have been almost immediately, or not longer than a few seconds at most.

The officers and crew of the bark got on board of the propeller at once, and the latter stood by the bark for about one hour, during which time she remained afloat. The bark then drifted away from the propeller and passed out of sight, either by sinking, or into the fog, it being uncertain by the testimony which, but more probably the latter.

As to the extent of the injury done to the bark there is considerable conflict. Those on board the bark, and who had the best means of knowing, estimate the distance the propeller cut into the boat at from eight to ten feet, but in the alarm of the moment, and in their hurry to leave what they considered a sinking vessel, they would be quite liable to overestimate the same; neither is it probable that she would have remained afloat as long as she did with so extensive a breach in her side, notwithstanding the buoyancy of a portion of her cargo. I think, however, that it is abundantly proven that the injury was considerable, and amply sufficient to cause the bark to sink, as she evidently
289 did. At all events, the bark and her entire cargo were lost, and that their loss is directly attributable to the collision is not, and I think cannot be, seriously questioned.

The damages claimed by the libel are $33,625.

The libel charges the propeller with the following specific faults:

1. That she was not properly manned.
2. Officers and crew not at their proper places and attentive to duty.
3. She had not a proper lookout properly stationed.
4. Too great speed.
5. That she did not take timely and sufficient precautions to avoid the bark.

The answer of Charles Ensign and George W. Holt, claimants and owners, and Julius W. Brett, master of the propeller, after detailing the events preceding the collision substantially as above stated, so far as they relate to the propeller, sets up the following defences:

"The said respondents allege that the said collision happened without fault or negligence or want of care or want of skill on the part of the said propeller, or any of her officers or crew; and they allege that the same was caused (if any fault existed on the part of
290 either vessel) from the fact that, as appears from the said libel, the fog signal of the propeller being heard on the said barque, and both vessels being in a fog, the said barque might have avoided and kept out of the way of the said propeller, which she did not do; or from the fact that the said barque had not proper lookout, or did not have a proper fog-signal, or did not properly use and sound the same; or from the fact that the said barque was, (as in fact she was,) at and before the time of said collision, unseaworthy, overloaded, and unmanageable."

"The said respondents allege, however, that they are ignorant of and as to what was done on board the barque, but expressly charge, as aforesaid, that if any fault existed upon the part of either vessel, such fault was upon the part of the barque, her officers and crew."

The answer, also, after detailing the circumstances of the propeller standing by the bark, and the latter remaining afloat so long as she did, and alleging offers of assistance on the part of the propeller, in conclusion, alleges further:

"That the said officers and crew of the said barque neglected and refused to return to said barque, and neglected and refused to take any steps or to save the said barque and her cargo from loss, and that
291 by reason of such abandonment of the said barque by her officers and crew, and their aforesaid refusal and neglect, and by reason of the said barque being, as aforesaid, unseaworthy, overloaded, and unmanageable, and by reason of fault hereinbefore charged, on the part of said barque, and not by reason of any fault, negligence, or any other matter in said libel alleged upon the part of said propeller, her officers, and crew, said barque and her cargo were lost, as the said respondents are informed and believe."

The position that was advanced and mainly contended for on the argument, however, was that the collision was the result of inevitable accident.

Mr. Newberry and Mr. Brown, (Newberry, Pond & Brown,) for libellant.

Mr. Moore, (Moore & Griffin,) and Mr. Hibbard, for respondent.

LONGYEAR, *J.*:

I shall consider first the fifth specification of fault against the propeller, viz, that of her failure to keep out of the way of the bark.

The solution of the question of fault here presented depends upon the construction of article 15 of the act of April 29th, 1864, (13 Stat., 60,) as applied to the facts of this case.

"ARTICLE 15. If two ships, one of which is a sailing-ship and
292 the other a steamship, are proceeding in such direction as to involve risk of collision, the steamship shall keep out of the way of the sailing-ship."

Article 15 is general in its application. The duty it imposes attaches all the same, whether it be in the day-time or in the night, in clear weather or in a fog. Its requirements are in no manner affected or modified by the provisions of article 16. Those provisions merely impose additional preliminary duties. Hence, the fact of a collision between a steamship and a sailing-ship must be held prima-facie evidence of fault on the part of the former, in a fog as well as in clear weather.

The steamship must, of course, be apprised of the existence of the conditions upon which her duty under article 15 attaches, and she must be so apprised as to be enabled to act intelligently and effectually. Those conditions are—

1. The fact that there is another ship in the vicinity;
2. That such other ship is a sailing-ship; and
3. The position and course of the latter.

In the day-time this is accomplished by actual observation of the vessel. In the night-time by means of the lights which every sailing-vessel is required to exhibit. In a fog, whether by day or by night, by means of a fog-horn, if under way, or a bell if not under way,
293 as required by article 10 of act of 1864, before cited. The difference is in the mode or means merely, and not in the result. In the one case the mode or means is by signals addressed to the sense of sight, and in the other to the sense of hearing. The result in the eye of the law is precisely the same in both cases, and the legal obligations of a steamship to see and hear the signals when properly given, and to govern herself accordingly, attaches in the one case precisely the same as in the other.

Unless it appears, therefore, that the sailing-vessel did not do her full duty in regard to signals, or in some other respect, and that such failure

on her part contributed to the collision, there is no occasion to inquire into the details of the conduct and manœuvers of the steam-vessel leading to the collision. In such a case her fault consists in the fact that she did not keep out of the way of the sailing-vessel.

The first inquiry, therefore, that naturally arises is as to the conduct of the bark.

There is no dispute but that the bark kept her course, as she is required to do by article 18 of the act of 1864, up to the time she put her helm hard a starboard. This was done in the midst of the confusion and consternation incident to the sudden peril in which the
294 bark was placed by the propeller, the latter then being almost upon her. Even if the starboard order was an error, it was therefore not a fault to which any responsibility can be attached.

That the bark's lights were properly set and brightly burning, that she was properly manned and equipped, that her officers and crew were properly placed and attentive to duty, and that her fog-horn was properly sounded, are fully made out by the proofs, and are in fact undisputed.

It is said, however, that, the bark being apprised as she was of the approach of the propeller by hearing the signal-blasts of her steam-whistle a considerable time before the collision, the bark ought to have got out of the way of the propeller, and ought also to have rung her fog-bell sooner than she did, in order the more effectually to have notified the propeller of her presence and position.

By article 18 the bark was required to keep her course. By article 10 she was required to use her fog-bell only when not under way. Here she was under way. The claim, therefore, is that the bark should have departed from those rules, both as to course and as to signal, and consequently that the case comes under article 19, which provides as follows:

295 "In obeying and construing these rules, due regard must be had to all dangers of navigation, and due regard must be had to any special circumstances which may exist in any particular case, rendering a departure from the above rules necessary in order to avoid immediate danger."

The danger of navigation which was then present, the fog, was one that was expressly provided for by articles 10 and 16, and with reference to which, as well as article 18, the bark was acting. This she had a perfect right to do, unless some of those special circumstances mentioned in article 19 should have arisen and come to her notice, requiring a departure from the rules. The special circumstances in this case, to which the collision is directly attributable, are the failure of the propeller to hear, and when she did hear, at first to rightly understand, the bark's signals; and her failure to stop her headway in time to avoid a collision after she did correctly understand those signals. There is not, and cannot be, any pretence that the bark had any notice or intimation whatever that the leviathan which was in her vicinity was not provided with ears to hear her warning signals, or having ears, would fail to put them to their proper use, or would approach so near before taking any measures to avoid her, that when taken they would be ineffectual.
296 Neither is there any room to claim that she could have known the propeller was coming down upon her sooner than she did, and when she was made aware of it, it was clearly too late for any effective action on her part. She did what in the alarm incident to the suddenness of the peril thus brought upon her, and without her fault, was thought best, but to no avail. For her to have changed her course before

this would have been in violation of article 18, and for her to have rung her bell sooner than she did would have been in violation of article 10, either of which would have constituted a fault, for which she might have been held responsible if a collision had still occurred. It is true, after the danger had become imminent, and in fact the collision was inevitable, her wheel was put to starboard and her bell was rung: but, as we have already seen, these acts, even if erroneous, cannot be attributed as faults under the circumstances.

It is also claimed that the injury was but slight, and that the bark was unnecessarily abandoned by her officers and crew. The proofs clearly show that the injury was of a serious character and sufficient to sink the vessel, and that the loss of the vessel and cargo were directly attributable to that course. It is true she remained afloat for an
297 hour at least, but she was a long distance from shore, and in very deep water, and her injury was of such a character as to afford reasonable apprehension, to say the least, that all efforts to save her would be unavailing, and could result only in peril to those who should undertake it. It would be unreasonable to require the crew of a vessel to remain upon her under such circumstances.

The bark then being in no manner of fault, the only defence that remains to be considered is that raised upon the argument, viz, that the collision was the result of inevitable accident; and this, as we shall see, involves a consideration of the particular conduct and maneuvers on the part of the propeller, including the question of speed.

"Inevitable accident" is defined by Dr. Ludington to be "that which the party charged with the offence could not possibly prevent by the exercise of ordinary care, caution, and maritime skill." (The Virgil, 2 W. Rep., 201.) Our own Supreme Court defines it to be "where a vessel is pursuing a lawful avocation in a lawful manner, using proper precautions against danger, and an accident occurs." "The highest degree of caution," say the court, "that can be used is not required. It is enough that it is reasonable under the circumstances." (The Grace
298 Girdler, 7 Wall., 203; see also The Pennsylvania, 24 How., 307, 313; The Washington, 14 Howard, 532, 536; The Morning Light, Wall., 550, 554, 560.)

It becomes necessary, therefore, next to inquire whether reasonable care, caution, and maritime skill were exercised on board the propeller under the circumstances.

The propeller was a large vessel, being of upwards of 1,400 tons burthen. She was in waters frequented by other vessels, and was, in fact, in the vicinity of other vessels at the time, as indicated by the fog-horns heard on board of her. She was so proceeding in a fog in which other vessels could be seen but a short distance; on which account emergencies were likely to arise, as did actually arise in this case, in which a sudden change of course would become necessary to avoid accidents, which, as the proof shows, would require two men at the wheel to accomplish with reasonable celerity. She was so proceeding, too, with fog-horns sounding from vessels on nearly all sides of her, requiring close scrutiny to distinguish any one of them from the others.

With a full knowledge of all these facts on the part of those in charge of her navigation, we find the propeller proceeding at a rate of speed which I think the proof clearly shows to have been not
299 much, if any, less than five miles an hour, and with a watch of only four persons, consisting of the mate in charge, one man at the wheel, one man on the lookout forward, and one engineer; a watch hardly sufficient on such a vessel on the clearest night—and we may

add, the master, although notified of the peril, calmly reposing in his state-room. And then, when the crisis comes, and seconds assume the magnitude of minutes in estimating the time within which the headway of the propeller must be stopped in order to avoid the catastrophe, we find the officer in charge of the deck out of reach of the means provided for signalling the engineer to stop and reverse. Let it be borne in mind that the care and caution used must be reasonable under the circumstances. The watch on the propeller may have been a reasonable one, it certainly could have been no less and be a reasonable one, and the position of the mate, in front instead of on top of the pilot-house, may have been a reasonable position, on a clear night; but it certainly needs no argument to show that what is barely sufficient on a clear night would fall far short of being such in a fog, with the attendant circumstances above stated. Upon a vessel of that size, reasonable care
300 and caution, under the circumstances, required two men at the wheel to insure celerity in that regard, and two competent lookouts, experienced in the navigation of those waters, to insure close scrutiny of the many signals from vessels in the vicinity, and that the officer in charge should have been where he could have instant access to, and command of, the signals to the engineer. I think this much, at least, was absolutely necessary to answer the law requiring reasonable care and caution under the circumstances.

It cannot be said that these omissions did not contribute to the collision. I think it quite clear from the proofs that they did.

1. According to the proofs, the propeller came within the sound of the bark's fog-horn when at least half a mile distant. Why was it not heard; or, if heard, why was it not distinguished from the other horns until the two vessels had arrived within such a fatal proximity that a collision was inevitable? It certainly cannot be attributed to the fog, because sound will travel as well in a fog as in a clear atmosphere, and, as s well known, is often intensified by it. It was unquestionably owing to the insufficiency of the lookout, both in number and in the competency of the one on duty. An additional lookout would at least
301 have afforded another chance of escape. And when we take into consideration the fact, as shown by the proofs, that the lookout who was then on duty was on his first trip on the lakes, although an old sailor on the ocean, and that he was confessedly unacquainted with the use of fog-horns, the necessity of an additional lookout assumes a vastly greater importance.

2. The want of a second man at the wheel made it necessary to call the lookout from his post before the necessity of a lookout forward had ceased to exist, as the exact position of the bark had not then been made out.

3. The propeller kept her headway just as much longer than she would have done if the mate had been at his post on top of the pilot-house as it took him to get there from where he was, which was several seconds. While the accident may not have been entirely avoided if this time had been saved, it certainly would have made the blow less severe.

4. I think, also, that reasonable care and caution was not exercised on the part of the propeller in regard to her speed.

The words "moderate speed" are used in article 16 in a specific and not in a general sense. It is moderate speed in a fog that is
302 meant. Therefore, within the meaning of the article, what would be moderate speed in a clear day or night is not necessarily such in a fog; and what would be moderate speed in a light fog, one in which objects can be seen at a considerable distance, would not be such in a

dense fog in which objects can be seen at a less distance; "moderate speed," therefore, as used in article 16, is a relative term, and whether or not it be such must be determined, not by any certain, fixed number of miles per hour, but by the particular circumstances of each case in which the question arises. By what criterion, then, shall the rate of speed be judged? The object and purpose of the rule requiring moderate speed in a fog is to avoid collisions.

This object can be accomplished only by each steam-vessel adopting such a rate of speed in a fog as will place her headway under such easy and ready command that she can be stopped within such distance as other vessels can be seen from her, on the assumption, however, in all cases, that such other vessels will do their full duty in apprising approaching vessels of their proximity. If the speed of a steam-vessel in any given case is greater than this it is too great, and in case of collision she must be held in fault, no matter what her rate of speed
303 per hour actually is. It is believed that there is no other safe criterion by which the object of the rule can be insured.

This criterion, substantially, has been recently adopted and applied by both the circuit and district judges in the southern district of New York in three cases of considerable importance, and to which, to say the least, it applies with no greater force than to the present case. (See The Western Metropolis, 7 Blatchf., 214; The D. S. Gregory, 2 Ben., 166; The Louisiana, ibid, 371. See, also, McReady vs. Goldsmith, 18 How., 90, 91.)

The practical application of the rule above indicated certainly cannot be difficult in actual practice. A fog is never of sudden occurrence, or at least never so sudden as not to afford ample time for deliberation in regulating speed. The pilot of every steam-vessel ought to know, and every competent pilot of course does know, practically, within what distance his vessel can be stopped at any given rate of speed. He can also judge with practical certainty about how far off in any case in hand he can see another vessel in a fog. Here, then, he has all the data by which to regulate his speed with practical certainty so as to ensure safety to his own and to other vessels.

304 Now, to apply the rule to the present case, the mate testifies that upon the first intimation he had of the proximity of the bark—and this, it must be remembered, was by hearing her fog-horn, and before she had yet been seen from the propeller—he instantly, or as soon as he could get to where he could do so, signalled the engineer to stop. That on hearing the two horns, which was almost immediately after, he signalled the port engine to back. That immediately after this, and for the first time, the bark's green light was seen from the propeller, when he immediately signalled both engines to back. The engineer testifies that all these orders were promptly obeyed; and that both engines continued to back, and to back strong up to the time the propeller struck the bark. Notwithstanding all this exertion, the speed of the propeller was still such when she reached the bark as to crush in her side, inflicting a serious and fatal injury, which shows that her speed must then have still been very considerable.

Under the rule above stated, therefore, the speed of the propeller was not that moderate speed meant by article 16, as applied to the circumstances of this case.

It will not avail the respondents anything to attempt to excuse
305 the failure of the propeller to stop in time to avoid a collision by saying that those in charge of her did not learn of the bark's proximity and position in time to do so, because, as we have already seen, that excuse itself constitutes a fault.

The propeller, therefore, being in fault in each of the four particulars above specified, the defence of inevitable accident is not admissible.

It is true the fogs that settle down upon the waters constitute one of the great—perhaps one of the greatest—perils of navigation, especially upon those waters, constituting, as in this case, great highways of commerce; and courts should, no doubt, deal leniently with vessels charged with fault in cases of collision where this great peril is a contributing cause, but not so leniently as to induce a letting down from that reasonable degree of care, caution, and diligence due, in such circumstances, to the safety of life and property and the general interests of commerce.

In view of the importance which this case assumes, as well in regard to the greatness of the calamity to the libellant in the loss of his property, and the pecuniary loss to respondents, if held liable, as to the general interests of navigation and commerce in having the rules of
306 navigation as well defined as is practicable—an importance which was fully realized and ably met by the exhaustive and instructive arguments of counsel on both sides—I have given the case my closest attention and scrutiny, and endeavored to apply to it the rules of law in such manner as not only to do simple justice between the parties and no more, but at the same time to inflict no injury, but perhaps to be of some service, to the interests of navigation and commerce generally.

So applying these rules, however, I am clearly of opinion that there was such a letting down, on the part of the propeller, from that due and reasonable care, caution, and diligence above mentioned, as to constitute gross fault on her part, and on account of which she is responsible for the damages done by the collision complained of.

A decree must be entered in favor of libellant for the full amount of his damages resulting from the collision, and referring it to a commissioner to ascertain and report the same.

307 In case of the Colorado, decided in district court May 25, 1872.

Opinion of Judge Longyear in district court, on exceptions to commissioner's report.

The propeller Colorado was libelled by Elon W. Hudson, owner of the barque H. P. Bridge, for collision. The bark was sunk by the collision, and became a total loss, together with her entire cargo, which consisted of 65,000 brick and 34,000 bushels of oats. The Colorado was held in fault, and it was referred to a commissioner to ascertain the damages. The commissioner having made his report, the respondents except to the same, 1st, as to the amount allowed for the value of the bark, and 2d, because, in the allowance for freight, no deduction was made for future expenses in earning the same, and that the amount allowed for freight is too large.

Mr. Wm. A. Moore (Moore & Griffin) for the exceptions; Mr. H. B. Brown (Newberry, Pond & Brown) opposed.

LONGYEAR, J.:

First. As to the value of the vessel: The vessel being a total loss, her value, just before the collision, is the measure of damages. The difficulty is, to ascertain the value. The criterion is, what she would
308 have brought in the market, not under the hammer at a forced sale, but in the ordinary course of sales of such property.

(Lowndes on Collisions, 141 to 146; 1 Pars. on Sh. & Adm., 542.) The commissioner estimated the value of the vessel on the opinion of the libellant and eight other persons, owners, dealers in, and builders of vessels. No question is made as to the competency or ability of these witnesses to testify, except that some of them had not seen or been on board the Bridge recently before her loss; nor but that the commissioner's allowance of $25,000 as the value of the bark is correct, as based upon those opinions. It is true, none of these witnesses, except the libellant and one or two others, had any knowledge of the condition of the bark just before the collision; but those who did know, particularly the libellant, described the condition in their testimony, and it is to be presumed that the commissioner applied the testimony of the other witnesses with reference to that description. To say the least of it, the testimony on the part of the libellant made a fair prima-facie case for the allowance, and the question is now, was that case rebutted?

To rebut the case thus made by libellant, respondents produced the testimony of several vessel-builders, showing the cost of building a vessel of the description of the one in question, and what is the
309 estimated annual rate of depreciation in value; and upon this basis succeeded in reducing the value of the bark considerably below the amount allowed. In the case of the Clyde, (Swat., 24,) Dr. Lushington said upon this subject: "The value is the market price at the time of the destruction of the property, and the difficulty is to ascertain what would be its market price. * * * In order to ascertain this (the value) there are various species of evidence that may be resorted to, for instance, the value of the vessel when built. But that is only one species of evidence, because that value may furnish a very inferior criterion whereby to ascertain the value at the moment of destruction. The length of time during which the vessel has been used, and the degree of deterioration suffered, will affect the original price at which the vessel was built. But there is another matter infinitely more important than this—known even to the most unlearned—the constant change which takes place in the market." And in another case (the Iron Master, Swat., 443) the same learned judge says: "The best evidence is the opinion of competent persons who knew the ship shortly before she was lost. The second best evidence is the opinions of persons conversant with shipping and
310 the transfers thereof. In addition to testimony of this description, many other circumstances may be called in aid; as, the original price of the vessel, the amount of repairs done her, the sum at which she was insured, and other circumstances of a similar nature. It is manifest that facts of this kind, though not to be wholly excluded, have a slighter bearing upon the case; for, after a lapse of years, the amount of price from a change of circumstances might have little bearing upon the question." And in Dobree vs. Schrœder, (2 Mylne & Craig, 488,) Lord Cottenham also held that the market price was a better test of a ship's value than the prime cost with a deduction for wear and tear. The learned judge said: "The latter method has this disadvantage, that it can never be applied with certainty to any two cases. In one case, a ship may have been purchased advantageously and employed disadvantageously; and in another the reverse may have taken place." The correct rule upon this subject, where the vessel is a total loss, seems to be that the market value of the vessel just before the collision is the proper measure of damages; that the best evidence of such value is the opinion of competent persons who knew the vessel shortly before she
311 was lost; and that the next best evidence is the opinions of per-

sons conversant with shipping and the transfers of vessels. There are, of course, exceptions to this rule, as where the vessel lost, from some peculiarity of construction in order to adapt her to some special purpose out of the usual course of shipping, preclude there being any market value for her. An instance of this may be when a vessel is built for a special trade requiring peculiar and unusual conditions in her construction. In such a case, for want of a better criterion of value, cost of construction or purchase price, with a deduction for depreciation by ordinary wear and age may be resorted to. (See Lowndes on Collisions, 141 to 146.) But the present case does not fall within the exception. The commissioner had before him both classes of evidence stated in the rule, and although it may be open to criticism in some respects, I think it was amply sufficient to justify his finding.

The exception to the allowance of $25,000 for the value of the vessel is therefore overruled.

Second. As to the amount allowed for freight. This exception was in part submitted *to* at the hearing, and it was conceded that there should be deducted from the amount allowed by the commissioner
312 $457 for future expenses in earning the freight.

The freight upon the 65,000 brick was allowed by the commissioner at the rate of $5 per thousand. Respondent contends that this is more than the testimony warrants. Hudson, the libellant, testified that the freight on the brick was either four or five dollars per thousand —that he was quite sure it was five dollars. This was a fact to be made out by libellant, and it ought not to be left uncertain, especially where, as in this case, it is susceptable of certainty of proof. The most that can be made of Hudson's statement is that the freight on the brick was not less than four nor more than five dollars per thousand, and I think that at the most the allowance ought not to be more than a medium between the two sums, or four dollars and fifty cents per thousand. Fifty cents per thousand, amounting in the aggregate to $32.50, must therefore be deducted from the allowance made by the commissioner in addition to the $457 before mentioned, making the whole amount to be deducted $489.50, to which interest must be added.

The exception to the amount allowed for freight is therefore sustained.

313	Amount to be deducted	$489 50
	Int. from May 11, 1869, the date of the collision, to April 8, 1872, the date of the report, at 7 %	99 94
	This amount	$589 44

must be deducted from the aggregate amount of the commissioner's report, viz, $34,264.70, and a final decree must be entered in favor of libellant for the remainder, viz, $33,675.26, with interest from April 8, 1872, the date of the commissioner's report, and costs of suit.

314

315 CIRCUIT COURT OF THE UNITED STATES
For the Eastern District of Michigan, ss :

I, Addison Mandell, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify the above and foregoing document or record to be a true copy of the original record on appeal from the district court of the United States for said district,

in the case of Elon W. Hudson, owner of the barque H. P. Bridge, libellant and appellee, against the propeller Colorado, Charles Ensign & George W. Holt, claimants and appellants, filed in said circuit court; and also of the original entries, files, and proceedings in said circuit court on appeal in said cause, including the opinions of Hon. John W. Longyear, district judge, in the said district court, on final hearing, and on exceptions to commissioners' report, filed in said circuit court in said cause; that I have carefully compared the same with such originals, and the same is a correct transcript therefrom, and of the whole of such original records, files, and proceedings.

In testimony whereof I have hereunto set my hand and the seal of said court at Detroit this ninth day of October, in the year one thousand eight hundred and seventy-three.

ADDISON MANDELL, *Clerk.*

(Indorsement on cover:) No. 278. E. Michigan, C. C. U. S. The propeller Colorado, Charles Ensign & George W. Holt, claimants, appellants, vs. Elon W. Hudson, owner of the barque H. P. Bridge. Filed 18th October, 1873.

REC. 278—7

~~SUBSTITUTED RECORD.~~

SUPREME COURT

OF THE

UNITED STATES.

No. 278.

OCTOBER TERM A. D. 1874.

THE PROPELLER COLORADO,
CHARLES ENSIGN,
GEORGE W. HOLT,
Claimants and Appellants.
vs.
ELON W. HUDSON,
Owner of the Barque H. P. Bridge.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

DETROIT.
O. S. GULLEY'S STEAM PRESSES, 10 & 12 LARNED STREET, EAST.
1875.

SUPREME COURT

OF THE

UNITED STATES.

No. 278.

THE PROPELLER COLORADO,
CHARLES ENSIGN,
GEORGE W. HOLT,
Claimants and Appellants.
vs.
ELON W. HUDSON,
Owner of the Barque H. P. Bridge.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

Amendments or Corrections of the Record made by stipulation.

~~Transcript of Pleadings and Evidence substituted by stipulation in place of the Original Record.~~

DETROIT.
O. S. GULLEY'S STEAM PRESSES, 10 & 12 LARNED STREET, EAST.
1875.

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LIBEL.

IN ADMIRALTY.

To the Judge of the District Court of the United States for the Eastern District of Michigan:

The libel of Elon W. Hudson, of the City of Detroit, in the 1
State of Michigan, against the propeller Colorado and Julius W. Brett, who is or lately was master, her boats, tackle apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, and thereupon the said libelant does allege and propound as follows:

First—That your libelant at the time when the cause of action hereinafter stated arose, was the owner of the barque H. P. Bridge, which said barque, as well as the aforesaid propeller Colorado, were vessels of twenty tons burthen and upwards, 2
enrolled and licensed for the coasting trade, and employed in the business of commerce, and navigation between ports and places in different States and Territories upon the lakes, and navigable waters connecting said lakes, within the true meaning and intent of the act of Congress.

Second—That on the 11th day of May, A. D. 1869, the said barque H. P. Bridge, being then and also at the time of the collision hereinafter mentioned, tight, staunch, strong, and in every respect well manned, tackled, appareled and appointed, and having the usual and necessary complement of 3
officers and men stationed at their proper posts and upon the look-out for the protection and safety of said vessel, was bound on a voyage from Milwaukee, in the State of Wisconsin, to Detroit, in the State of Michigan, and to Buffalo, in the State of New York, laden with about 30,535 bushels of oats and 65,000 of Milwaukee brick.

That about 11 o'clock in the evening of said eleventh day of May, the said barque H. P. Bridge was in the waters of Lake Huron, and to the southward and eastward of Thunder 4

Bay Island ; that she had her signal lights properly displayed and brightly burning.

That the wind was then from the southward, and the weather somewhat foggy, but not so but that signal lights could be seen at some distance.

That on account of the fog the said barque had taken in and furled all her light sails and foresail, and was proceeding under easy canvass, and at half speed, sailing by the wind on
5 the starboard tack, close hauled, and keeping her fog horn blowing, heading about southeast by east.

That while so sailing, the whistle of an approaching steamer was heard, which proved to be the whistle of the said propeller Colorado, apparently on the starboard bow.

The barque kept her fog horn blowing, and sometime before the collision hereinafter mentioned, first, the head-light, and then the colored signal lights of said propeller were seen off the starboard bow.

6 The propeller was still rapidly approaching, and the fog-horn of the barque was blown again and again, and the bell of the barque, which can be heard two or three miles, was rung violently to attract the attention and warn the propeller, and as she came nearer, she was hailed to keep clear. But the propeller, with great speed and violence, came on and struck the starboard side of the barque, near her mainmast, at nearly a right angle, and so great was her speed that she cut through all the timbers of the barque and into her side for about the distance of ten feet or over, and thereupon the said barque filled
7 with water, and sank.

And libellant claims and insists that said propeller was not properly manned ; that her officers and crew were not at their proper places, and vigilantly and carefully employed in keeping watch and ward for the safe navigation of said propeller. That she was proceeding at too great speed, had not the proper look-out properly stationed, and did not take timely and sufficient precautions to avoid and steer clear of said barque, as they were bound to do.

8 That from the time of and before the whistle of said pro-

peller was heard, and up to the time of the collision, the barque was kept steadily on her course, and that everything required by good seamanship to be done on the part of the said barque, H. P. Bridge, her officers and crew, to avoid the said collision, was done, and that said barque was guilty of no fault, carelessness, negligence or bad seamanship.

Third—That the freight on board of the said barque then pending, to which she would be entitled at the completion of said voyage, was the sum of two thousand dollars, as near as 9
libellant can state the same, which became and is a total loss to libellant.

Fourth—That the said 65,000 brick were of about the value of $1,625, which said brick were in the custody of said libellant as a common carrier, and became and are a total loss.

Fifth—That the said barque, H. P. Bridge, was of about the value of thirty thousand dollars, and became and is a total loss to said libellant.

Sixth—That the total of said damages amounts in all to the sum of thirty-three thousand six hundred and twenty-five 10
dollars, and interest from the date of said collision, for which your libellant claims to have a lien upon said propeller Colorado enforceable in this honorable court.

Seventh—That the aforesaid collision was occasioned solely by the negligence, unskilfulness and carelessness of the persons navigating the said propeller Colorado, and not by or through any fault, negligence or improper conduct on the part of your libellants, said vessel, her master or crew.

Eighth—That, since the aforesaid collision, your libellant has applied in a friendly manner to the owners of the said 11
propeller, and requested them to settle for the damages sustained by your libellant as above mentioned, but the said owners have refused to pay the same or any part thereof.

Ninth—That all and singular the premises are true, and that the said propeller is now lying at the port of Detroit, in the district aforesaid.

Wherefore, your libellant prays that process in due form of law, according to the course and practice of this honorable court in cases of admiralty and maritime jurisdiction, may 12

issue against the said propeller Colorado, her boats, tackle, apparel and furniture, and that all persons having interest therein may be cited to appear and answer all and singular the matters aforesaid; and that this honorable court will be pleased to decree the payment of the damages aforesaid, with costs; and that the said vessel may be condemned and sold to pay the same; and that your libellant may have such other and further relief as in law and justice they are entitled to receive.

13 ELON W. HUDSON.

Be it remembered, that on this 31st day of May. A. D. 1869, before me, at Detroit, personally appeared the within named E. W. Hudson, and made solemn oath that he has heard read the foregoing libel and knows the contents thereof, and that the same is true according to his best knowledge, information and belief.

WM. D. WILKINS,

U. S. Commissioner,

Sixth Circuit and Eastern District of Michigan.

Filed May 31st, A. D. 1869.

14 June 2, 1869, stipulation filed to answer judgment.

ANSWER.

UNITED STATES DISTRICT COURT.

Eastern District of Michigan.

IN ADMIRALTY.

15

To the Honorable Ross Wilkins, District Judge, &c., &c.:

The answer of Charles Ensign and George W. Holt, claimants and owners, and of Julius W. Brett, master of the propeller Colorado, her tackle, apparel, and furniture, respondents to the libel of Elon W. Hudson, against the said propeller Colorado, her tackle, &c., and hereupon the said respondents answer and allege as follows:

First—The said respondents admit that the propeller Colorado, in said libel named, at the time in the first article of said 16
libel mentioned, was of the tonnage, and was enrolled, and licensed, and employed as is in said article alleged, and that the barque in said article mentioned was of the tonnage and employed as is therein alleged. The respondents are ignorant of and as to the other matters in said article alleged, and thereupon deny each allegation in said article contained not herein admitted, and demand proof thereof.

Second—The respondents admit that at the time in that respect alleged in the second article of the said libel, the barque H. P. Bridge, therein mentioned, was in the waters of 17
Lake Huron, and that a collision took place upon the waters of the said lake between the said propeller and the said barque. The respondents deny that the said propeller rapidly approached the said barque at any time in said article referred to, and they deny that the said propeller, at any time in said article stated, came on or struck the said barque with great speed or violence, or cut through the plank-timber or ceiling of the barque, or into the deck of the barque any distance. The said respondents further deny that the said pro- 18

peller was not at the time, in that respect, in said article referred to, properly manned and navigated, and deny that her officers and men were incompetent, unskillful, or insufficient; and they deny that said officers and men were not at their proper places, or vigilantly and carefully employed in keeping watch and ward for the safe navigation of the propeller; and the said respondents allege that the said propeller, at said times, was well and properly manned and navigated; that
19 her officers and men at said times were competent, skillful and sufficient, and were at their proper places, and vigilantly and carefully employed in and about the management and navigation of the propeller.

The said respondents deny that the said propeller was, at the time, in that respect in said article alleged, proceeding at too great speed, and they deny that she had not a proper lookout properly stationed, and they deny that the said propeller did not take timely and sufficient precaution to avoid and
20 steer clear of the said barque.

The respondents deny that at the time, in that respect, in said libel mentioned, every act and thing by good seamanship required to be done on the part of the barque, her officers and crew, was done, and they deny that the officers and crew of the said barque were not guilty of any fault, carelessness, negligence, unskillfulness or bad seamanship in the premises.

The said respondents say that many things in the said second article of said libel are therein untruly alleged and pleaded, and the respondents are ignorant of, and as to each
21 of the allegations in said libel contained, not herein expressly stated, admitted or denied; and the said respondents deny each allegation in the said article contained inconsistent with this answer, and demand proof of each allegation in the said article contained, not in this answer expressly admitted to be true, and admit and allege:

That heretofore, and on the 11th day of May, 1869, the said propeller, she then being tight, strong and in every respect well manned, appareled and provided, and entirely sea
22 worthy, was upon Lake Huron, having on board a cargo of

merchandize, and bound upon a voyage from Buffalo, in the State of New York, to Chicago, in the State of Illinois, and remained and was so tight, strong and in every respect well manned, appareled and provided, and entirely sea-worthy, down to and at the time of the collision hereinafter stated, and at said time of said collision, and for a long time before that time had good and proper look-out properly stationed and on duty, which duty was well and vigilantly performed, and had and carried and exhibited good and sufficient 23
signal lights, properly fixed and constructed, brightly burning and according to law and the statute in such case made and provided; that at the time of the said collision, and for a long time before then, John B. Hall, the mate of the said propeller, was on deck and the officer of the deck; Benjamin Walsh was at the wheel; James M. Armstrong on lookout, and Adam Haig, the first engineer, was in charge of and working the engines; that at about eleven o'clock of the night of the said 11th day of May, 1869, the said propeller, when so on Lake Huron, was upon a course north northwest, and 24
was proceeding at her usual and ordinary speed of about nine miles an hour; that at about the time last mentioned, it became foggy upon the lake where said propeller was, and the speed of the propeller was at once slackened, and she thereafter proceeded at a moderate speed, and at a very slow rate of speed, and thereafter, and while in said fog, the fog-signal of the propeller (the said propeller then carrying a proper fog-signal, that is to say, a steam whistle, placed and in all respects according to law,) was properly sounded and used according to law, and at least as often and oftener than every 25
five minutes; that while so proceeding and at such moderate and slow rate of speed, and so sounding and using said fog-signal, and when the mate of the propeller was upon the hurricane deck in front of the pilot-house, and the look-out was forward on the promenade deck, and Walsh was at the wheel, and each occupying proper place, and where each had been for a considerable space of time, and each was, and so had been, vigilantly employed, each in his proper duty, the sound of a horn was heard on board the propeller (she then being 26

on her aforesaid course and the fog continuing), the sound of which horn appeared to proceed from ahead of the propeller; that thereupon the mate of the propeller ordered her wheel aport, and both the engines of the propeller were stopped; that very soon after this order was given the sound of the horn was again heard on board the propeller, the said horn sounding two blasts, and such sound appearing to sound from ahead of the propeller; that the order was then given and
27 obeyed on the said propeller to starboard her wheel, and the port engine of the propeller was backed; that thereafter the sound of the horn in two blasts was again heard upon the propeller, still ahead; whereupon the starboard engine of the propeller was backed, and soon afterwards the propeller and the barque came in collision, both engines of the propeller backing at the time, the propeller striking the barque upon her starboard side; that by such collision great damage was done to the propeller.

The said respondents allege that the said collision happened
28 without any fault or negligence, or want of care or want of skill on the part of the said propeller, or any of her officers or crew; and they allege that the same was caused (if any fault existed upon the part of either vessel,) from the fact that, as appears from the said libel, the fog-signal of the propeller being heard on the said barque, and both vessels being in a fog, the said barque might have avoided and kept out of the way of the said propeller, which she did not do; or from the fact that the said barque had not proper look-out, or did not have a proper fog-signal or did not properly use and sound
29 the same, or from the fact that the said barque was (as in fact she was), at and before the time of the said collision, unseaworthy, overloaded and unmanageable.

The said respondents allege, however, that they are ignorant of and as to what was done on board the barque, but expressly charge as aforesaid, that if any fault existed upon the part of either vessel, such fault was on the part of the barque, her officers and crew.

Third—The respondents are ignorant as to the matters
30 alleged in the third article of the said libel. They, therefore,

deny each and every allegation in the said third article contained, and demand proof thereof.

Fourth—The respondents are iguorant as to the matters alleged in the fourth article of the said libel. They, therefore, deny each and every allegation in the said fourth article contained, and demand proof thereof.

Fifth—The said respondents are ignorant as to the matters alleged in the fifth article of the said libel. They, therefore, 31
deny each and every allegation in the said fifth article contained, and demand proof thereof.

Sixth—The said respondents are ignorant as to the matters alleged in the sixth article of the said libel. They therefore deny each and every allegation in the said sixth article contained, and demand proof thereof.

Seventh—The said respondents deny each and every allegation in the seventh article of the said libel contained.

Eighth—The respondents admit that the libellant, since 32
said collision, has applied to the owners of the said propeller for the payment of the damages alleged by him to have been sustained by the said collision, which damages the said owners have refused to pay. The respondents deny each and every allegation in the eighth article of the said libel contained, not herein expressly admitted to be true.

Ninth—The respondents deny that all and singular the premises in the ninth article of said libel referred to are true, and say that many things are untruly alleged and pleaded in said libel. As to whether the premises are within the admi- 33
ralty or maritime jurisdiction of this Court, the said respondents submit that question to this Court.

Tenth—The said respondents further allege, that by the said collision the said propeller was greatly injured and caused to leak badly, and that her officers and crew then and there thought, and had good and sufficient reason to think, that said propeller then and there, by reason of said damage, was in great danger of sinking and being lost, and that the services of all the officers and crew were and would be required 34

for her own preservation, except in so far as such services were offered to the said barque, her officers and crew; that the officers and crew of the said barque at once, upon the happening of the said collision, abandoned and improperly abandoned the said barque and came on board of the said propeller; that the said barque was at the time of the said collision, and before then, unseaworthy, overloaded and unmanageable; that the said barque lay near the said propeller, and so that
35 her officers and crew could have returned on board of her, for the space of about an hour after the said collision; that the officers of the propeller offered a line to the officers and crew of said barque, and to make the same fast to the propeller, and to give the aid of the said propeller, her officers and crew for the purpose of saving said barque and her cargo from loss; that the said officers and crew of the said barque neglected and refused to return to said barque, and neglected and refused to take any steps to save the said barque and her cargo from loss, and that by reason of such abandonment of the
36 said barque by her officers and crew, and their aforesaid refusal and neglect, and by reason of the said barque being as aforesaid, unseaworthy, overloaded and unmanageable, and by reason of fault hereinbefore charged on the part of said barque, and not by reason of any fault, negligence, or any other matter in said libel alleged upon the part of the said propeller, her officers or crew, said barque and her cargo were lost, as the said respondents are informed and believe.

And thereupon the said respondents pray that the said libel may be dismissed; that the said respondents may have
37 decree for their costs and disbursements in this action, and such further and other, or further or other decree or relief in the premises as they may be entitled to.

CHARLES ENSIGN,
GEORGE W. HOLT,
By CHARLES ENSIGN,
JULIUS W. BRETT,
By CHARLES ENSIGN.

MOORE & GRIFFIN,
Claimant's Proctors.

38 GEORGE B. HIBBARD,
Advocate.

NORTHERN DISTRICT OF NEW YORK, }
City of Buffalo, to wit. }

On this 27th day of August, 1869, personally appeared before me Charles Ensign, one of the respondents named in the foregoing answer, and made oath tha he had heard read the foregoing answer, and knew the contents thereof, and that the same is true according to the best of his knowledge, information and belief.

G. T. MIATT, 39

Notary Public for Erie County, N. Y.

Filed Sept. 7th, 1869.

LIBELLANT'S TESTIMONY.

Deposition taken before Wm. D. Wilkins, U. S. Commissioner, at Detroit, March 29, 1870, of

Isaac D. Stedman. 40

I live in Chicago, Illinois; am a mariner by occupation; have sailed 32 years; 5 years as mate, and 16 years as master; have sailed all the time on the lakes except two years upon the ocean; have had underwriters' certificates to my capacity; in May, 1869, was master of the barque H. P. Bridge, owned by libellant; Hudson hired me, and the papers stated him to be the owner; recollect collision with the Colorado; was on a voyage from Chicago to Buffalo; it was the first trip of the season; left Chicago May 3d, without cargo; reached Racine same day and took one part of cargo of oats; left Racine on the 41
morning of the 4th, and reached Milwaukee between 4 and 5 in the afternoon; took on board the balance of the cargo of oats, in all, 30,500 bushels or thereabouts; also, took on 65,000 bricks; brick consigned to Detroit, oats to Buffalo; left Milwaukee on the morning of the 7th; Neil McCollum was first mate; he was a competent man; George Stedman was second mate; he was also competent; the barque was in good condition—first class in every respect; she measured 425 tons, and was five years old; I think her length was 167 feet; the crew 42

were good men; there were no ordinary seamen among them; they were all able seamen; the weather was good and winds light from Milwaukee to Thunder Bay; the collision occurred on the night of the 11th of May, 1869, between the hours of 11 and 12 at night; I will say in the middle of Saginaw Bay, about 25 to 30 miles south-east of Thunder Bay light; the wind was south that evening; fresh breeze; starboard watch (the Captain's); went on watch at 8 o'clock; in the afternoon pre-
43 vious, for about four hours, we steered our course south and south by west; we were by the wind and kept our course as near as we could; wind was W. S. W. from 1 to 5; from 5 to 9 o'clock it was varying, with rain squalls from south-west to south, and at 9 o'clock it set in south; at 10 o'clock it set in thick; from 10 o'clock until the collision, it was thick at times; it would rain and clear off so that you could see a mile from 10 to 11; but at 11 o'clock it shut in, and there was no let up after that; Daniel McKinnon was at the wheel from 10 to 12; McKinnon was a good man—an able seaman; he always steer-
44 ed a good trick at the wheel; from 10 to the collision, Lincoln Erskine was our lookout; he was a competent man; he was stationed on the top gallant forecastle, between the knight heads and the capstan; we carried good lights—the usual lights—red light on the port, green on the starboard; when I came on deck we were steering, at 8 o'clock, heading about S. W. by W. on the port tack, staid that way until a little after 9 o'clock, going at 6 to 7 miles an hour; shortly after 9 o'clock we went about on the starboard tack to avoid a collision with another vessel; we then headed S. E. by E. ½ E.;
45 kept so until the collision occurred; I never altered it; we were going, after we took the light sails off, at 10 o'clock, at about 4 or 5 miles; commenced to take in the light sails after 10 o'clock because the weather didn't suit me; it was getting thick and I wanted to have the vessel so that I could handle her; from that time until the collision, I carried 3 jibs—the fore-topsail, main staysail, mainsail and mizzens; up to about half an hour before the collision I carried the foresail; being in a fleet of vessels I hauled up the foresail so that I could avoid
46 collisions, go about if I met a vessel; besides the wheelsman,

myself and the lookout, there was on deck from 10 o'clock up to the time of the collision, Patrick Nolan, seaman, and George Stedman, second mate; commenced blowing our horn in the neighborhood of 10 o'clock; I heard one other horn on my starboard beam about one mile off, I should think; somewhere in the neighborhood of 11 o'clock, a little before or a little after, I first heard propeller whistles; from the sound of her whistle I should judge she was two points on my starboard bow; at that time we were going through the water somewhere 47
in the neighborhood of 4 or 5 miles; when I first heard the whistle I watched it, tried to keep track of it; I was by the man at the wheel where I could see into the compass at that time; vessel was then heading S.E. by E.; Nolan and Stedman were hauling up the foresail about the time we first heard the propeller's whistle; heard that whistle eight times; when we found it coming close to us we sounded our horn a little oftener than we had been doing; two blasts of the horn were sounded by us at intervals; as the propeller came closer we sounded more frequently; the propeller answered my horn three times; 48
I think there was an interval of one minute or so between each sounding; the propeller appeared to be approaching; certainly the signals from the propeller were answered, at least I took it to be such, just as much as one man answering another; I noticed that our lights were burning well; that day there was extraordinary care taken of the lights; that day me and the cook took every pane of glass out of the lamps and cleaned them—in the forenoon—we put the panes back again.

Question. What passed between you and the second mate —anything about the propeller coming down? 49

(Objected to.)

Answer. He saw the lights first, and reported to me that he could see both her side lights.

Q. Who made her mast-head light first?

A. I did from underneath our mizzen cross-trees.

Q. What were you upon the mizzen cross-trees for?

A. To see if I could get the position of the propeller any better from up there than I could on deck; I couldn't tell how long it was before the collision; it might have been probably 50

three minutes before the collision that I saw her masthead light from the mizzen rigging; at that time saw no other light; her light then bore, as near as I can judge, four points off my starboard bow; seemed to be quite a distance off from where I was; I could not tell how far she was off; saw it as soon as I got aloft; just as I got on the cross-trees she blew her whistle and gave me her location so that I knew where to look for her; from the time we heard the propeller's whistle there had
51 been no change in our course; there was no change made up to the time of the collision; when I saw the masthead light I came down on deck about as soon as I could conveniently; went forward at once right from the mizzen rigging; after I got forward and was walking back again, then I saw both the lights of the propeller, when I was about in the middle of the vessel coming aft; when I was forward I guess I told the man that was on the top gallant forecastle to ring the bell; I cannot say for certain; when I was forward my son was in the middle of her and he said: "Father she is coming right into
52 us, I can see both her lights."

(Statements of what the boy said objected to by Proctor for claimant.)

I turns round and go to where my son was standing, and I saw both the lights then; I halloed to them to back her as well as sound the horn; there was no reply that I heard from the propeller; as near as I can judge she was six hundred feet off that time that I halloed to back her and bearing coming into me at right-angles, as near as I can describe it; she struck us forward of the main rigging on the starboard side; she ap-
53 peared to be going about five miles an hour; I couldn't tell whether she was backing or going ahead.

Q. Any orders given that you could hear on either vessel from the time you made the colored lights until the collision?

A. I did not hear any.

Q. How did she strike you—at what angle?

A. I should say right angles; I don't know much about your angles, but she came stem into us.

Q. State whether she struck you square or canting to one
54 side?

A. Square; her stem penetrated the "Bridge" thirteen feet nine inches by measurement—measured her in Chicago shortly after the collision—on the next trip; Bernhard Carlin was with me when I measured her.

Q. How did you measure her—by what marks could you tell?

A. By fresh green paint left from the "Bridge;" the "Bridge" was painted green, rail, plank shear and bottom, white between, and newly painted; we measured on the port 55
side, being the outside of the deck of the propeller, with a tape line; the green paint extended on the starboard side about the same distance; I also know by seeing her stem alongside the mainmast; when she struck I was standing between the main and mizzen rigging; when she struck I wasn't standing at all, because the collision knocked me down; when I got up I looked to find out where the crew was, and gave orders to get our boat down; the crew went aboard the propeller, and got there before she got away from our vessel; 56
part of them went up the main rigging and stepped on the decks of the propeller; others went on by her anchor stocks; I didn't see any one on the anchor stocks, but I could hear them talking; the vessels were together, I should say as much as five minutes; after they parted, myself and the two mates remained on the barque; I got off with the boat astern of our vessel; after we left the barque we saw the oats, which was part of the cargo, floating on the water; they came from the hole that was made by the propeller; there was no other outlet for them; got on the after gangway of the propeller with a line; one of my crew, Patrick Nolan, threw me the 57
line.

Q. State what efforts were made by the crew or officers of the propeller to save those on the "Bridge."

A. There was no effort made at all to my knowledge; I heard none; saw none.

Q. Do you know whether any application was made for aid or assistance?

(Objected to.) 58

A. There was; made application myself for a line; they couldn't find one, was their answer, and that answer came from one of my men that was aboard the propeller; I didn't hear any answer from the propeller's crew; when I got on board the propeller I went straight to the captain, and asked him to run her up to the "Bridge" that we might save our clothes; he said he would; he undertook to do so, but couldn't find the vessel; I saw her lights once, and once only, from the propeller's pilot
59 house; that was, you understand, while we working up looking for her; couldn't tell whether the vessel sunk; all we know is, that we lost her lights all at once; when I saw the lights from the pilot-house, as I stated, she might be from three to four hundred feet off; after we got to the propeller, we called for a rope to hang on with, but none was thrown; we then dropped the boat back to the gangway and found Nolan, who had a rope for us; I say this in explanation of an apparent discrepancy in my former statement as to not getting a line.

Q. State whether you had any conversation afterwards
60 with Mr. Hall, mate of the propeller, and if so, what was it?

(Objected to.)

A. I had; I asked him if he had a watch on deck, and who was on deck; he told me that he had the watch, and that there was no one else except the man on the lookout and the man at the wheel; I had a conversation with the lookout of the propeller next day; I have forgotten his name.

(Statements of the lookout taken subject to objection.)

In passing through the straits, while walking the forecastle
61 deck with him alone, he asked me several questions regarding the landmarks and shoals thereabouts; I told him that he ought to know the landmarks and the shoals better than me, passing them so much oftener than I did; he said that he didn't, for that was his first trip on that boat, and that surprised me; I says, "ain't you posted here?" he said "no;" says I, "did you understand my horn last night when I was a blowing of it?" he said he did not; I asked him then, "did the mate instruct you in regard of it?" he told me he did not,
62 and didn't believe the mate knew himself about the horn.

Q. What time did you pass Thunder Bay light?

A. Between the hours of 12 and 1 P. M., on the 11th of May, 1869, about three miles off; I was steering a course S. S. E., with the wind free; came about first time about 4 o'clock; we then headed about W. S. W., and so continued until about 9 o'clock in the evening, when I went about to avoid a collision, or I should have gone further on it; the breadth of beam of our barque was, I think, thirty feet and four inches, at the time of the collision, at 11 o'clock, there was no 63
time that we could not see objects a length ahead; I could see the lookout from the wheel; I think it was ten minutes to 11 when I first heard the propeller's whistle; I went into the cabin after the collision; I noticed the time by the clock; it was twenty minutes to twelve; I cleared away the boat myself when I left the barque; up to the time of the collision, I continued to hear the horn of the other vessel; I could not tell whether the barque was sinking or not when I left her; I did not look to see, because my own common sense told me she could not stay up. 64

Q. Can you tell why it was she staid afloat so long as she did?

A. The buoyancy of the oats composing her cargo; I did not have time to go into my own room to secure any of my clothing.

Q. State whether or not anything more could have been done than was done by the officers and crew of your vessel to avoid that collision?

A. There could not, sir. 65

CROSS-EXAMINATION.

Was born in Harwich, England; at the time of the loss of the "Bridge" had sailed her two years—seasons of '67 and '68; crew manned ten all told, master, two mates and cook, and six seamen; Neil McCollum was mate, a man about forty years of age; second mate, my son, was twenty-two years of age; McKinnon, the man at the wheel, was sailing with me on that occasion for the first time; Erskine was sailing with 66

me for the first time also; never seen either of them before that trip; mate may have turned in 8 or half past 8, I didn't keep any particular record of that; after he turned in the next time I saw him was when he came to me on the boat; from the time I took the deck until 10 o'clock, I was knocking all round the vessel from one end of the vessel to the other; at one time I was by the man at the wheel, and another time by the look-out; the same man kept the look-out (Erskine) from 8
67 to the time of the collision; but the wheel was relieved at 10 o'clock; McKinnon relieved Patrick Nolan; when Nolan was relieved I was walking the house right forward of the wheel; when he was relieved he went forward into the forecastle deck, round by the foremast; what he was doing there is more than I can tell, he might have lit his pipe; but I soon set him to work taking in light sails; Nolan, Stedman and the captain set to work taking in light sails; Erskine did not help; it occupied the whole hour to furl those sails; after Nolan went forward, it might have been ten minutes before I went for-
68 ward; I was letting go the halyards and helping clew them up; I was the captain referred to helping taking in the light sails; I lent them a hand to clew them up and then sent the men up to furl them; when I was at work taking in the light sails I was in one case on the cabin, again forty feet from it, and again one hundred feet from it; the horn was commenced to be sounded at 10 o'clock, or a little afterwards; Lincoln Erskine sounded it; no one else; I heard one other horn; the first time I heard the whistle of the "Colorado" was ten min-
69 utes to 11 o'clock; I went and looked at the clock; two blasts; next I heard the whistle was, I shall say, five minutes afterwards; next shortly afterwards—might have been five, might have been ten minutes afterwards; next about the same time; till the vessels continued getting nearer together it sounded at about the same intervals, then they sounded oftener; about half past 11 they began to sound more frequently; looked at the clock at that time; at that time the propeller seemed to be about half a mile off, and it bore from two to three points on our starboard bow; could not see any of the lights of the pro-
70 peller, not from the deck; at that time my lookout had not re-

ported any light; my son was the first one that reported the light; that was a very short time after half past 11; it might have been two, or it might have been three minutes; the look-out did not report any light at all; at 11 o'clock it was thick foggy; no rain at 11 o'clock; no moon nor stars visible; the fog was not so dense as I have seen fogs; I have seen fogs denser than it was at 11 o'clock or yet at 12 o'clock; when I said in my direct examination that we could see a mile off, I meant that between 10 and 11 o'clock you could see a light a mile off, 71
but after 11 you could see a vessel's length or more anywhere; but I don't think you could see half a mile; we carried our lights in the mizzen rigging; at the mizzen rigging the beam of our vessel is less, about two feet, than at the main or fore rigging; carried our lights in the mizzen rigging above the shear pole, that is, above the rail, two feet; there were inside screens aft and at the sides; one of them was the Oswego Patent light, that was the starboard; the other was the Buffalo, large patent light; there were showers of rain between 10 and 11 that night; the officers of the vessel had the charge of the 72
lights; whatever officer had the deck when they were set; they were set that night in the mate's watch; had no trouble with the lights; never knew them to go out in the world; I always make a practice of giving these things my personal attention, and the extra care given that day was because I do so; there was more done to the lights that day than ordinary; the occasion of doing it that day was because I had fine weather and had a good chance to do it; at the time we came about at 9 o'clock, we were about half a mile from the vessel; if we had kept on I would have had to keep off to get under his 73
stern; I think that the last order that I gave before the collision was to the man at the wheel to look out and keep a good full onto her; that was about the time the propeller was getting pretty close to us; this was at the same time I looked at the clock; it was half-past 11; the last order given prior to that one was to the man on the lookout to blow the horn; I couldn't say how long it was before the last order, perhaps a couple of minutes; I said the propeller sounded her whistle eight different times; I counted them; could tell within one point or five 74

points from the sound of the whistle whether the vessel was over my port or starboard bow; when I saw the propeller with all her lights, she was coming on us at right angles, I think; when she was two points over the starboard bow, I think she was from four to five miles off; I should judge by the sound; I was sworn in the case of Nolan *vs.* the "Colorado."

Q. When you gave that testimony did you swear as follows: "I do not know how many times the propeller sounded
75 her whistle, as I did not count them; I should think, perhaps, a dozen times?"

A. Yes, I swore that.

Q. Do you know anything more of the facts about the collision than you did then?

A. No; no more than what I've thought of; I have thought it over considerable since then.

Q. Was the heading of your vessel changed at all from the time you first heard the whistle until the collision?

A. It was not, to the best of my knowledge.

76 *Q.* And no other orders were given than those you mentioned?

A. There might have been; I do not remember of any.

Q. How long after the collision that your vessel disappeared?

A. I could not tell; I lost my time along with the vessel; have no judgment on the subject; it might probably have been halt an hour; did not exceed it.

Q. Did you not swear in the testimony above referred to that it was from half to three quarters of an hour from the
77 time of the collision until the time the barque finally disappeared?

A. Yes.

Q. Do you know that she sunk at the time you lost sight of her, or only that she floated off in the darkness?

A. I do not; no more than we couldn't find her again; steamed up to where we saw her last, and she wasn't there: it was the time the propeller came up next trip to Chicago that I measured her stem; I then measured the spots of the
78 green paint; the distance from the stem on the port side.

Q. Where are McKinnon and Erskine; don't you know?

A. I do not; last time I saw Erskine was in September; and I think the last time I saw McKinnon was when we arrived at Milwaukee, after the collision; have had no talk with the second mate since.

RE-EXAMINED.

Erskine lives in Massachusetts; at the time the sails were 79
being furled never left the deck until after the collision; all the
ssistance I rendered was from the deck.

Q. State whether the sounding of the horn interferes with the duty of a lookout.

(Objected to.)

A. It does not.

Q. State whether it is usual for lookouts to do this in fogs.

(Objected to.)

A. Invariably; in all cases.

Q. Can you state whether or not you did count the whis- 80
tles of the propeller; explain the discrepancy in your statement.

(Objected to.)

A. I have counted as many as eight; I have no further explanation.

Q. If you heard the whistle two points off your starboard bow at a distance of four or five miles, would she not have got past you before the collision?

A. Well, if she had kept right straight along I suppose she would. 81

RE-CROSS.

Q. Did you not swear in your examination in Chicago, that you went below to light your pipe after you heard the propeller's whistle, and before the collision?

A. That I could not say.

Q. If you did so swear, was it true or not?

A. I think I lighted my pipe; I went below to fill it; to run down into the cabin and light my pipe, I don't consider 82

leaving the deck; I think I lighted my pipe twice during that watch.

(Signed,) I. D. STEDMAN.

Sworn and subscribed before me on March 29th, 1870.

(Signed,) WM. D. WILKINS,

U. S. Commissioner, Eastern Dist. Mich.

Depositions taken before Philip A. Hoyne, U. S. Commis-
83 sioner, at Chicago, March 31st, 1870:

John Henderson.

Q. What is your name?

My name is John Henderson; I am 24 years of age; I reside in the City of Chicago, County of Cook, and State of Illinois; I am a sailor; I have been so engaged for seven seasons; five seasons on the lakes, and the balance of the time on salt water; I have sailed principally on sail vessels and some on side-wheel and propeller vessels; during the early part of the
84 season of 1869 I was on the H. P. Bridge, a barque; I was on her at the time of the collision with the Colorado; the collision occurred on my watch below; I turned in about half-past 8 P. M.; I went into the forecastle; there were two other men in my watch; one of them, Joseph Wood, the other, do not remember his name; at the time I turned in the barque was somewhere on Saginaw Bay; I do not recollect the tack we were then on; the weather was a mild, hazy evening, threatening rain; it was not extra thick; I do not recollect the direction of the wind; I went to sleep; I could not say exactly what awakened
85 me, but suppose it was the sound of the horn, and the noise they were makins forward on the forecastle; two distinct blasts were given on the horn as signals; I should judge that I heard four or five of these signals; I heard the whistle, which was supposed to be the propeller whistle; I heard this some three or four times, which was answered by the horn; this was in reply to the propeller's whistle; each signal of the horn was two blasts; afterwards I heard the ringing of our bell; I got out on deck as soon as I could, as this is the signal of danger;
86 when I got on deck I saw the propeller coming stem onto us;

she was then, I should think, about three lengths of herself from us; this was as far as I could see in the fog; I could have seen the light further, but could not see the hull of the boat further; I do not now remember hearing any hail; at the time she struck us I was standing about the mainmast on the port side; the propeller struck us about midships, forward of the main rigging; some of the main rigging was stove in; she struck us nearly at a right angle, not hardly a right-angle; her stern was nearer our bow than our stern; she came into 87
the hull, I should judge, some eight or ten feet; as near as I could judge her stem was within three or four planks of our mainmast; I went up on to the propeller's bow as soon as I possibly could; I got on to our rail, then caught hold of her wale on the port side; then caught hold of her anchor stock and got up to the next wale; then I caught hold of the anchor chain and climbed up on to the propeller; the anchor stock was somewhere from three to four feet abaft the stem; Nolan was the next man that got up after me; I do not know how he got up; I was trying to get a line to put over the pro- 88
peller's bow when I heard Nolan sing out; I reached down my arm to him, as I could not get a line, and with this assistance he got on board; he was, at this time, standing a little on the starboard bow coming up the stem; I do not know what he was standing on; the propeller remained in the cut made in the barque, I should judge, some ten or fifteen minutes; I did not see any assistance rendered by any one aboard of the propeller to get any of the crew of the barque on board; I asked one of the crew to help me get a line out, but he complained about his thumb being sore, which proved to be the wheels- 89
man; the two boats of the propeller were aft on deck, secured, one on the starboard and one on the port side; there was no efforts made to lower them; the tackle was not even put on; I tried to see if there was not one of the boats which could be lowered, but they were not handy; the tackles were not hooked on; the officers of the barque lowered their boat and came around to the after gangway of the propeller; I heard the noise of the boat in the water, and I run aft and assisted them to get on board; when the propeller backed out from the barque, I 90

could not see that she made any particular stop ; I could see our green light showing, but all at once it disappeared after the propeller had given one or two revolutions of the wheels back; she then went forward toward the green light, but the light had then disappeared ; as I went aft to help the officers on board, a man came out of the engine room, and I asked him if the propeller was leaking, and he answered, not much ; it proved to be the engineer that I spoke to (the statement of the supposed
91 engineer objected to by counsel for defence.) The rail of the propeller was, I should judge, about sixteen feet above the deck of the barque ; I have never seen the barque since I lost sight of her green light , the officers or crew of the propeller made no offers of assistance to the crew of the barque; they did not appear to be doing anything ; they were crowded together forward, and seemed to be in confusion ; it was only a few seconds after I saw the propeller before she struck us.

CROSS-EXAMINED.

92 I sailed on board of the brig saxon for about six months, in the year 1868 ; we were trading between the port of Chicago and Oswego, N. Y.; I went one trip afterwards to Manistee, on board the R. J. Sanborn; after the loss of the barque Bridge I sailed on the schooner E. G. Gray ; made one trip on her to Muskegon ; my watch closed on board the barque at 8 o'clock P. M.; Joseph Woods and another man were in my watch, and the mate was officer of the watch ; it was not dark when my watch closed ; it was not dark when I turned in ; I went down into the forecastle and did not come on deck again : I do not
93 think the stars were shining or the moon ; it was hazy, but did not rain ; it was damp ; I do not think that I lay more than two and a half minutes after I woke; I think I was awakened by the horn blowing and the noise forward ; when the bell rang I knew there was danger; I was not very long getting up after the bell rang; I got up just as quick as I could; I did not stop to put on any clothing, except what I had on when I went to sleep; when I first got up on deck, I ran aft to see whether the propeller was going to strike us; I
94 was afraid she was going right through us; when I got out on

deck, I could see the hull of the propeller, and saw her mast head light, but saw no other light; I ran about as far as the mainmast; when I got there the propeller struck us, and I made for the deck of the propeller; I ran somewhere from 70 to 80 feet before the propeller struck the barque; I ran as fast as I could to get to where our boat was; I did not stop to notice who were on our deck, as I ran aft and kept my eye on the propeller all the while, to see where she was going to strike us; I did not see any one on our deck; when I got up 95
on deck of the propeller it was foggy, more so than when I turned in; it was a good deal more foggy, for it was only a little hazy when I turned in; I was sworn and gave my testimony in the case of Nolan *et al. vs.* the "Colorado," touching the same collision.

Q. Did you swear, when you gave that testimony, as follows: "It was raining and was very hazy when I went below?"

A. I do not remember swearing to that; I knew it had 96
been raining before, and was very hazy; if this is written down it is probably a mistake in the writing.

Q. Was not that testimony read over to you, and did you not then sign it?

A. I do not remember that it was read over to me; it might have been; I do not remember signing that particular; I remember signing the testimony.

Q. Did you swear in that testimony, "After I got onto the propeller the weather was thick, foggy and murky."

A. I do not remember that I swore to that exactly; I do 97
not remember swearing to that question.

Q. Do you say that you did not swear as stated in the two foregoing questions?

A. No; I do not remember swearing; I may have, but I don't remember.

Q. Have you any more knowledge now in regard to this collision than you had when you gave the testimony referred to?

A. No; I have not as much. 98

Q. If you made the statements contained in the two questions referred to, were they true or not true?

A. They were true.

It was some ten or fifteen minutes after I got on deck before the vessels got apart; all the crew of the barque, except the captain and two mates, came up on deck of the propeller very soon after I got up; the captain and the two mates came to the after gangway, on the port side of the propeller, and
99 got on board there; the propeller did not back out immediately after I got on her deck; after I got on deck I went aft to the after gangway to help the officers get on board; I did not do anything else except to look at the boat as I was going aft to see whether she could be lowered; the propeller did not back out until after I had helped to get the officers on board at the gangway; she might have started, but had not got any great distance; she had started back when I had got back forward; after helping them on board, I went directly forward; the couple of turns backward did not take the propeller very far; I
100 do not think she stopped until she went ahead again; when she started ahead again I should think she was about the length of herself from the barque; I could not tell whether the barque sunk then or disappeared in the fog, but I did not see her or her light after the propeller started ahead again.

Q. Did you state in the former testimony which you gave, "After I got onto the propeller I saw a crowd of men on the deck of the propeller, who seemed to be doing nothing except looking at the barque?"

101 *A.* Yes; I believe I did.

The propeller, when I came on deck, was coming directly on to us, stem on.

(Signed) JOHN HENDERSON.

Neil McCollum, Sworn:

My name is Neil McCollum; my age 42 years; I reside in New Buffalo, in the State of Michigan; I am a seaman; I have sailed, put it all together, in the neighborhood of 25
102 years; I have sailed as an officer, off and on, for the past 14

years, principally on the lakes; I was on the barque H. P. Bridge during the fore part of 1869 as first mate; I had been on her about a month before, fitting her out; this was her first trip that season; her condition was good. On the trip from Milwaukee to Thunder Bay we had disagreeable weather—foggy and misty, but not heavy; I recollect the night of the collision with the Colorado; I turned in that night about 8:30 P. M.; I stopped up about half an hour after my watch was up; I turned into the cabin; I left on deck the second mate; I 103
am not positive whether the captain was on deck when I turned in; I think I did hear him up on deck; I do not recollect who was at the wheel; the second mate was a competent man, and could handle a vessel as well as any one; we had a good crew—all competent men and able seamen; at the time I turned in the barque was about half-way across Saginaw Bay; we were on the starboard tack when I went below; the weather was thick, hazy and foggy, not much wind—rather light wind; I went to sleep when I went below; I took a nap and woke up again; I heard the noise of the sound of the 104
horn, and I heard the mate sing out; I was about half asleep and half awake; I heard the captain walking on deck on the top of the cabin; two distinct blasts were given on the horn as signals; I could not say the exact number of these signals that I heard; I heard quite a number, and I heard the ringing of the bell afterward; I heard the propeller whistle; I think she blew a single blast, but am not positive.

Q. State whether the whistle was in answer to the horn or the horn to the whistle, or whether they seemed to be blown without any reference to each other. 105

A. Well, it seemed to be in answer to our horn; they seemed to have got the sound of our horn, I should judge.

Q. What other signal from the barque did you hear?

(Objected to.)

A. I heard the bell; I heard this ring some half a dozen times; I heard no other signal.

The captain stamped and called me on the top of the cabin and, having heard the propeller's whistle, I got up and went on deck; when I first went on deck I saw the propeller com- 106

ing right into us—she was about a length off; I did not notice any light on her except the mast-head light; at the time that she struck the barque I was standing on deck, just abaft the cabin; she struck us a little to the right angle.

Q. Do you mean just at a right angle; if not, which way from a right angle?

A. I should call it just at a right angle.

Q. Which was the greatest distance, the distance from
107 the stern of the propeller to the bow of the barque or the stern the propeller to the stern of the barque?

A. The stern of the propeller to the stern of the barque; the propeller came into the barque, judging from the marks on the propeller of green paint, that she ran into the barque about seven or eight feet; she struck the barque forward of the main rigging; I did not notice how far her stem was from the mainmast—it was but a short distance; our lights shone so that we could see right through from the mainmast to the bows of the propeller; immediately after the collision, the cap-
108 tain gave orders to lower away the boat, which was done by the second mate and myself; I went forward before I lowered the boat; I stood there until the captain gave the order to lower away the boat, as we could not save ourselves any other way; The crew of the barque got on the propeller by climbing onto the rigging; I should judge they climbed up some ten or twelve feet to get on to the propeller; this would bring it some six or seven feet inside of the rail of the barque; the captain got into the boat first, the second mate next, and I got in last; I got on to the propeller after we had run alongside
109 of the propeller, and some of our own men came to the gangway and assisted us to get on board; after I got on to the propeller I noticed the oats from the barque floating on the water; after I got on to the propeller I went forward and saw the men standing round there—on the upper deck; our men were in conversation with the look-out.

Q. What was the conversation?

(Objectod to.)

A. They asked him if he did not hear our horn; he an-
110 swered that he did; they then asked him why he did not mind

the signals of the horn; he replied that he did not know what they meant.

Q. Did you notice whether the barque appeared to be sinking before you left her?

(Objected to.)

A. Yes; I noticed that she appeared to be down at the head; I could not say how much, but she was very low down in the head; I saw this when I was in the boat; when I went forward on the propeller I saw the lights of the barque, and 111
she seemed to be very low down in the water forward; the foreyard seemed to be very low down to the water; I saw the starboard or green light; I stood looking at it and it disappeared all at once; the propeller was stationary at this time; after the light disappeared the propeller drifted from it; she did not work her wheels; I should think that it was only a few minutes after this before the propeller moved forward; I did not see the barque at all after this.

Q. Did you ever have any conversation with any of the officers or crew of the propeller after this? 112

(Objected to.)

A. I had a conversation with the wheelsman in the washroom, after he got relieved from the wheel the next day.

(Objected to.)

Q. What was that conversation?

(Objected to.)

A. He said he would be damned if he would have that jib-boom come into the wheel-house if he could help it.

Q. Did you have any further conversation with any of 113
them?

(Objected to.)

A. Yes; I had a conversation with the engineer; I asked him why he did not stop the propeller; he said he did, and then he told me, before we got to Milwaukee, that he went ahead on one wheel and backed on the other; at the time I came on deck the foresail was clewed up and topsail was on her, mainsail and mizzensail and jibs; I could not say whether all the jibs were on her or not; part of them were on; all the 114

light sails were off; I heard the captain of the barque hail the propeller; I had just come on deck at the time, or was just coming up out of the cabin; the captain sang out: "You are coming into us;" I did not understand whether he gave any order or not.

Q. Do you know whether they heard the hail on board the propeller or not?

A. No, sir; I could not say.

115 *Q.* State whether the wheelsman of the propeller said anything to you about reading a paper?

(Objected to.)

A. Well, yes; he said that he used to often take a paper in to read at the wheel, as she steered so well; I went into the engine-room of the propeller that same night; no one was there; I do not know where the engineer was; I staid there some five minutes or so looking for a pair of boots that I had thrown on board near the engine-room.

116 *Q.* Did you say anything about this to any one, and if so, to whom, and what was said?

(Objected to.)

A. I spoke to the wheelsman about it, and said that it was curious that the engine-room should be vacant in such a fog like this, when there were so many vessels around; he said this was nothing for them, for they would leave the engine-room and go all over the boat.

Q. Did he say anything to you about the way the propeller was headed at the time of the collision?

117 (Objected to.)

A. I do not recollect that he did.

Q. How fast was the propeller running that night?

A. After she left the vessel I should judge that she was running at the rate of six knots an hour.

Q. At the time the propeller started forward, after the collision, did she start towards where the green light was last seen, or not?

A. I could not say, as I did not see the compass.

118

CROSS-EXAMINED.

After I left the Bridge I sailed on the barque Norman, and made two trips to Green Bay; then I left her and went aboard the schooner Driver and sailed in her the balance of the season; I went in the capacity of first mate after I left the Norman; the two trips I made on the Norman I went before the mast; the Driver was engaged in the lumber trade; she is a fore and-aft rigged schooner; she carries about 145,000 feet in 119
the summer time; I went with her as mate two and a half months, and was captain of her for two months in the fall; in 1867 and 1868 I was mate of the brig Saxon all the season; we laid her up in September, 1868; on the night of the collision I went to sleep; when I got up I did not stop to put on any clothing; when I got to the deck the propeller was coming right into us—about a length off; the first thing I done after I got on deck, I went forward by the mainmast; I had not got to the mainmast when she struck; I do not think that I had got more than about ten feet forward of the cabin when she 120
struck; the cabin door is about nine feet from the taffrail; the cabin is about five to six feet above the main deck; the cabin door comes right out on deck at the aft part of the cabin; when I first stepped out of the door of the cabin the propeller seemed to be coming right on to us stem on; I went forward on the port side; I went close to the rail; we had boards laid down on the brick to walk on so as not to break the brick; I heard the horns blow before the captain stamped on the deck; I also heard the bell ring; this was only a short time before she struck; I think it was about three minutes before the cap- 121
tain stamped that I heard the bell ring; the captain had hardly finished stamping before I got on deck; I heard the captain hail and sing out, "You are coming into us;" I should judge that this was about a minute before he stamped for me; to get to the deck I had to travel about eighteen feet, counting in the stairs some eighteen to twenty feet; I was not long going this eighteen feet, I stepped pretty lively; I moved some eight or ten feet after I came on deck; I stepped first and looked at the propeller, and saw the green light of the 122

barque shining right on to the propeller; I did not notice the captain before the propeller struck us; he got off the cabin just after he stamped; he may have stamped a dozen times for me; I cannot say how many times; I am sure she had not hit the barque before I got on to the deck; there was no moon or stars visible; there was considerable fog, so much so that I do not think the sails of a vessel could be seen more than fifteen rods; I did not hear it rain that night; it was a foggy, driz-
123 ling, misty night; I think sails on such a night could be seen some fifteen rods; there was a kind of a light overhead; I cannot say whether there was any moon or not; one of the men in my watch was Nolan and Henderson; the name of the other man I do not remember; this was their first trip on the boat; I knew Henderson before; I did not know the other two men; the steward was in the cabin with me; I do not know which of us got on deck first, as I went out the cabin door and he went out the galley; after I got on to the propeller I went forward on the upper deck; the barque was then in sight; I
124 should think we were twenty rods or one hundred and twenty feet from her; the propeller was at this time headed right towards the barque; the propeller had backed away from the barque when I got on board of her; after I got on board of the propeller I went straight up forward; at this time the engine was not working; it was. I should think it was, some ten or fifteen minutes before the propeller started; I could not say which way the propeller moved, as I did not see the compass and had lost sight of the barque; it was after we got started that I went to the engine; I was in the engine room or
125 by the door at the time, I was looking for my boots about five minutes; I should think this was about half an hour after the propeller started; I did not see a soul in the engine-room; the engine was working; I went into the engine-room on the port side; I did not sit down nor lie down in the engine-room; I did not know but they might have thrown my boots into the engine-room, and I was looking around there for them; the wheelsman that spoke about reading his paper did not say that he was reading it that night; the engine-room was on the
126 main deck, and opens on both sides; the doors were both open;

I had no other reason for stopping at the engine room except to look for my boots, but I took observations, not seeing any one there; the conversation I had with the wheelsman was in the wash-room, that same night; when I got on deck he had just been relieved; he told me that he was the wheelsman; the collision took place about half-way between Thunder Bay light and Point-aux-Barques; the distance between the two points is about seventy-five miles, and the course is S. S. E; I could not say what course we were on; we were heading S. E. 127
by east, but on the wind; when I left the deck I think she was heading about S. E. by east, and we were carrying what is called starboard tacks aboard, and the sheets were hauled aft on the port side; the vessel would run about in the neighborhood of ten points; this is as near as I have ever seen her run; I saw the paint on the bow of the propeller the next day.

Q. Did not the propeller lay a portion of the time after the collision, and before the barque sunk, with the same or about the same heading as the barque? 128

A. The last I saw of the barque the propeller was heading straight on to the barque, what we call stem on.

Q. Same question repeated.

A. I did not notice it.

RE-DIRECT.

Q. How long from the time of the collision to the time the propeller started ahead to resume her voyage?

A. Well, I could not say exactly; I should say twenty 129
minutes—perhaps twenty-five.

Q. How long before she got clear of the barque?

A. I should not say more that five minutes.

RE-CROSS.

Q. When you went up on the deck forward, could you see the sails of the vessel as well as the light?

A. Yes, sir; the propeller was not moving at that time, only drifting; I could not say whether the vessel was drifting 130

or not; I could not say; I was looking at her, and all at once I lost sight of her, and I expected she went down.

Q. Did you see her go down?

A. I could not say.

Q. Then you could not say whether she drifted away or sunk?

A. Well, I could not say; at the time I lost sight of her she did not drift away, but must have sunk; there was no
131 wind to drift her away.

Q. Who was standing there with you?

A. I think this man here, John Henderson, was there, but I am not certain; the second mate was also there; also a man by the name of Nolan was there; there was no one else of our own crew there.

Q. Where were you all standing then?

A. We were standing on the upper deck, or the hurricane deck; part of us were looking over her bow about ten feet from the stem.

132 *Q.* What did you mean when I asked you whether you saw her go down, and you said you could not say?

A. I meant that she must be sinking, as her yards were so low down in the water.

Q. Were they listed over?

A. I could not say.

Q. Do you mean to swear that you saw her sink?

A. No, sir; I do not mean to.

Q. Will you swear as to your own knowledge that she
133 sunk beneath the surface of the water while you were within a half a mile of her?

A. Yes, sir; my idea is, that she sank while I was looking at her, to the best of my knowledge.

Q. Did you see her go beneath the surface of the water?

A. I could not say.

(Signed,) NEIL McCOLLUM.

George Stedman, Sworn:

134 My name is George Stedman; my age 23 years; I reside

in the city of Chicago county of Cook, and State of Illinois; I am a sailor; when I first commenced sailing I was very young, about eight years old; I have sailed on and off about six years; I have sailed five seasons as officer; I am the son of Captain Stedman; I have sailed with him the most of the the time, on and off; I would take a change with him; the forepart of last season (1869) I was sailing on the barque H. P. Bridge; I remember the collision with the Colorado; we left Milwaukee on the morning of the 7th of May 1869; the weather was 135
clear and a nice breeze of wind; I think the weather was clear until we got through the straits; the condition of the vessel was in good sailing condition; the collision took place during my watch on deck; I came on deck a little before 8 o'clock P. M.; I had in my watch a man by the name of Charley, and one by the name of Dan, and one Patrick Nolan; from the time I came on deck, up to the time of the collision, the captain was on the top of the cabin; all the time that I saw he was on deck all the time; I did not see him go below during the night; he was giving me orders during the night and I was 136
executing them, so that I could not tell whether he was below or not; Dan was at the wheel; I do not know his name—they called him Dan.

Q. Was he a competent wheelsman?

A. Yes, sir. Charley (something) was on the look-out; I think his name was Haskell; I think his right name was not Charley, although all the hands called him Charley; he had a very hard name to pronounce, and it was hard to get round it; the wind that evening was about south, light; our course after coming about on the starboard tack was about S. E. by 137
East; lights were burning all night; we commenced taking in sail about 9 o'clock P. M., I think it was; at the time of the collision we were running under the mizzen mainsail, mainstay-sail, foretopsail, foretopmast stay-sail, jib and flying jib; we had furled the main topmast stay-sail; was hauled down snug; the top gallant sail, the foretop-gallant sail, the main and mizzen gaff top-sails, the foresail hauled up snug; this vessel had nothing above the top gallant sail; I assisted in furling the sails; I suppose that I was aloft that evening over ten minutes. 138

Q. Did you notice whether the fog was denser or lighter above than below?

A. It was lighter at the time I was aloft.

Q. Could you see lights when you were aloft?

A. Yes, sir; I saw two or three, one red light, and one which I could not tell whether it was a bright or a green light; they seemed to be about four miles, between three and four miles; I did not see the propeller's light when I was aloft, to
139 know it; the weather, at the time I took in the sails, was foggy with mist of rain, light rain; I could not say how long it was before I made the propeller's light; it is so long ago that I have almost forgotton; I should think it was ten minutes, perhaps only five minutes before the collision; we were going, I should judge, about three miles an hour—not over that.

Q. State whether there was any change of course from the time you heard the propeller's whistle until the collision?

A. No, sir; there was not; I heard her whistle before I
140 saw her light; two distinct blasts from the fog-horn was given as signals from the barque; we commenced giving these from the time we commenced running on the starboard tack; there was no change of course from the time we commenced on the starboard tack until the collision; the light of the propeller bore, when I first made it, about one point on our weather bow; the horn was blown at very short intervals from the time we made the light; the look-out was stationed on the top-gallant forecastle deck.

Q. Could you tell from the light whether the propeller
141 kept her course?

(Objected to as leading.)

A. Well, I could tell when she changed her course to point for us; I should think she changed her course like this, (pointing and making a motion with his hands, which was about at a right angle), although I cannot tell the number of points.

Q. Do you mean at a right angle with her previous course, or at a right angle with the barque?

142 *A.* I do not understand the question.

Q. How long was this change of course before the collision?

A. About three or four minutes; at the time she changed her course the light bore about one point on the weather-beam, forward. Do you mean I should state the points of compass? I should say about south; at the time I made her bright light, I should judge she was about a quarter of a mile from us; the colored lights were visible then, when she changed her course, or immediately after; her bright light was visible before we 143
saw the lights when she first changed her course.

Q. What other signals were given from the barque?

A. She rang her bell; afterward some of the men hailed her; the captain of the H. P. Bridge hailed her to back on her, and kept hailing her until the collision; I also hailed him to back on her and to starboard his wheel; she seemed to me to be going over five miles; at the time I first made her colored light, she seemed to be about three or four times the propeller's length from us; she struck the barque stem on about midships of the barque.

Q. How long before or after you made her colored lights 144
did your father hail her to stop, back and starboard?

A. Right off, as soon as we made them, and saw that she was coming for us, and kept hailing until she struck us; she did not appear to obey the order; no reply was received to the hail.

Q. State whether, in your opinion, if she had been running at slackened speed, and had stopped and backed and starboarded her wheel whether she would have avoided the collision?

(Objected to.) 145

A. Yes, sir, I think she could have avoided; at the time she struck us I was standing or running from forward aft, and had just got across the bows of the propeller when she struck; I had been to call the men up; I was trying to get aft to call the others up, but they had already got up when she struck; the collision knocked me down; the stem came into the hull of the barque; I should say over eight feet; the stem of the propeller came within three or four feet of our mainmast; I did not notice 146

how the men got on to the propeller; I went aft and got into the boat; the mate or some one. I cannot say who it was now, told me to cut her loose; I told him I had no knife; the captain then came and got into the boat, and I jumped out and went to look for the axe to cut her loose; I did not find the axe, and when I got back I found that the boat had been cut loose, a part of it; I helped the captain to cut her loose—he had a knife; we waited and got the mate in and then left her;
147 when we left her she was in a sinking condition; at the time we left the barque the cargo of oats was all around us on the water; we rowed the boat up to the propeller, and stayed there about five minutes before we got any assistance to get us aboard; after I got on board I went to the captain of the propeller and tried to get him to go alongside of the barque again; he said he would, but he did not do it; I saw the barque after I got on to the propeller; I was standing on the bows of the propeller, on the deck below the pilot-house; I do not know the name of the deck; where the lookout was stationed; I saw
148 the green light and the cabin light of the barque; she was about the length of the propeller off from us; the green light bore from the propeller, off the starboard bow, about three points; I watched the light until it disappeared, and we lost it; I cannot tell how it disappeared; the propeller started on her course shortly after we lost the Bridge's light; we all went to the washroom; I never saw the barque after this; from the time of the collision until the time the propeller resumed her course I should think it was from half an hour to three quarters of an hour; I heard another horn that same evening; this I heard on
149 our weather quarter; this was faint; this was between 10 and 11 o'clock; I did not pay much attention to her horn, as I knew she was going the same way we was; our bell could be heard, I should think, about four miles on a night like that.

Q. State whether you had any conversation with the lookout of the propeller about the bell and the fog-horn.

(Objected to.)

A. Yes, sir.

150 *Q.* When and where?

(Objected to.)

A. It was forward, where he was stationed; that same night.

Q. What was said?

(Objected to.)

A. I asked him whether he heard our bell and horn; I asked him if he could tell how many blasts of the horn was blown, and he told me he did not know anything about it; I asked him if the mate had given him any instructions, and he said no; I asked him, then, if he did not see our light; he said 151
it was his first trip on the lakes and he did not know one light from another.

Q. Did he say whether he heard the number of blasts at each signal of the horn?

(Objected to.)

A. Yes, sir; he said that he heard two blasts, but he did not know what it meant.

Q. Did you have any conversation with the wheelsman?

(Objected to.)

A. Well, I do not know that I had any myself, but I heard 152
him talking with others; I heard him talking with Nolan in the wash-room; I cannot tell exactly when it was, but it was inside of the four days though.

Q. What did he say?

(Objected to.)

A. I heard him say he would be damned if he was going to have that jibboom come into the pilot house on to him; I also heard him say that the mate told him to put the wheel hard a-starboard; I could not say whether he said hard a starboard or hard a-port, I do not remember which, but he 153
countermanded the order and told him to put it hard the other way; he said he thought the propeller would have gone clear if he had not shifted the wheel; I heard him say that he often took a paper into the pilot house to read while he was steering; I heard him say the mate was a good man, and always used him well; he told me that he thought the other wheelsman would kill him before he got to Milwaukee on account of the captain; he told me that he thought he was watched to be murdered; he also told me of things which transpired there on the boat which 154

he never knew to have happened before; this was after the collision; he told me that one of them was that the captain was feigning to be asleep in the pilot house, and he told me that this was why he was afraid on account of the captain being in there.

Q. Did you go to the engine room that night?

A. I did; I was there once.

Q. Were you there more than once?

155 *A.* Once is enough.

Q. Who did you find there?

A. No one was in the engine room that I could find there while I was around; I was not there long; I went down there with the mate looking for a pair of boots of his; I do not know where the engineer was; the propeller was in motion at the time, and going at the rate I should judge, of over five miles; the weather was thick and foggy; I had no talk with the engineer that night; after that I had.

Q. Any conversation with him about the management of
156 the engine previous to the collision?

(Objected to.)

A. I heard him say that he stopped one engine; I heard him say again that he backed on one engine and went ahead on the other; I think it was that he backed on the port and went ahead on the starboard engine; the mate appeared to manage the vessel that night.

Q. Did the captain appear to be in charge of her while you were on board?

A. Well, I could not tell that, as I was in the wash-room
157 the most of the time; the most of the time I was on board I mean; we had nothing to do, and we had to sleep on the floor of the wash-room, and it was a good place to loaf; the mate was in charge of the propeller at the time of the collision.

Q. Did you have any talk with him in regard to the wind, or in regard to your course?

(Objected to.)

A. Well, I do not recollect now.

Q. Did you have any talk with the wheelsman about the
158 same subject?

(Objected to.)

A. I had: I heard him say he did not know how he was steering at the time; I heard him say that there was only three men on deck of the propeller at the time of the collision; that is, that were where they could see; I asked him who they were, and he said it was the mate, the look-out and himself; two blasts of the horn indicate starboard tack aboard.

Q. When and where was this talk that you had with the engineer? 159

A. It was in the wash-room, but I cannot tell when; it was inside of the four days.

Q. How did the "Bridge" appear to be sinking when you last saw her.

A. Down by the head, settling.

CROSS-EXAMINED.

I was born in Oswego, New York, in the year 1846; I 160
think the last day of October; I sailed on several vessels in 1868—part of the time before the mast, as mate and as second mate; I sailed on the "Bridge" two weeks as mate; I do not exactly recollect whether I was on her after or not that season; it was in the spring, early; the weather from eight o'clock till ten, during my watch that night, was drizzly rain and foggy; from ten to eleven o'clock it was about the same; from about eleven o'clock to the collision it was the same, foggy and raining; the fog and darkness, I cannot say whether it increased or diminished; I commenced taking in the light sails 161
about nine o'clock; this occupied the time, on and off, till half-past eleven; we took in the last about half-past eleven; it was not a good night to see a light; it was not clear; we shortened sail so that we could handle the vessel easily if we came across anything else; this was all the reason; the captain was not helping take in the sail; he was only giving the orders; after ten o'clock Nolan helped me; before ten o'clock the man that we called Charley and Dan helped me; I was aloft between nine and ten o'clock; I was up on the 162

topgallant yard; I could only see the bright light when I first discovered the propeller. I could not see her colored lights when I first saw her; when I first saw her colored light I was standing aft the fore-rigging, on the starboard side; our look-out was on the top-gallant forecastle deck; he reported the light of the propeller to the captain; from eleven o'clock to the time of the collision I was on the "Bridge's" deck; I was all around
163 keeping a lookout, walking around the deck forward midships, and aft and all over; after eleven o'clock, I could not state how many times: I was forward; I was forward pretty often; I do not think I was aft more than once or twice after 11 o'clock; I generally stay about midships when the captain is on deck.

Q. What was you forward for?

A. To see that the men were not asleep; I went aft for nothing particular, except walking and to look at the compass;
164 we had no compass forward.

Q. Do you go aft to look at the compass when the captain is officer of the deck and is on the quarter deck?

A. Sometimes, when I walk; there was a window in the forward part of the cabin where I could look in and see the compass.

Q. What business had you aft in a foggy night if the captain was on deck doing his duty?

A. Well, in the first place, I have as much business aft as I have forward; the captain was officer of the deck and had
165 charge, and I was executing his orders; after 11 o'clock up to the time of the collision the captain was aft on the deck and in the rigging; after we made the propeller's light he was in the rigging; he did not send me aft after 11 o'clock.

Q. Did you go aft and see the compass from the time you commenced taking in the light sail until you finished?

A. Yes.

Q. How many times and what for?

Q. I cannot say how many times I went to look at the
166 compass.

At 11 o'clock we were carrying our sails starboard tacks aboard, by the wind; wind was steady and light; the direction of the wind was from the southward; the wind was south; I would swear that it was within a point of south; it was south; it did not vary either way; we were heading southeast by east; I know this because I saw the compass; I cannot say when I saw the compass; I saw it at different intervals.

Q. Do you know anything more about your heading than that you kept your vessel by the wind; if so, what do you 167
know about it?

A. The wind was steady, and every time I looked at the compass she was going southeast by east; our vessel would work within twelve points of the wind; it depended how the wind was; I mean that she will work within from ten to twelve points; sometimes in light weather it would work closer than in heavy weather; we carried our lights in the mizzen rigging, aft; I could not say how far it was from the midships, aft; from the stern to the mizzen rigging, I should think, was about twenty feet; her beam is less at the mizzen than at the main 168
or forerigging; I cannot tell how much, but I think about a quarter of a foot; from the time we made the bright light of the propeller, up to the time of the collision, the orders given were, I gave Nolan an order to call all hands; I told the man on the look-out to ring the bell; I told them to blow the horn at short intervals; I do not recollect whether I heard the captain tell the man to keep the horn blowing at short intervals; these are all the orders that I recollect hearing.

Q. Did your master hail the propeller and tell them to starboard her wheel and back her, or did you do it? 169

A. Both of us did; I did not hear any order given on our boat to the wheelsman from the time we made the light until the collision; when we made the light of the propeller the captain was on the top of the cabin, right in front of the wheel, I should think from sixteen to twenty feet from the stern; I was aft the forerigging on the starboard side; I was looking for the light; I reported it; they all sang out about the one time, "there is a light;" Nolan saw it first; I mean the man on the look-out sang out, "There is a light on our weather bow;" I 170

asked the captain if he had seen it; he said "Yes;" I got up on the rail and watched his light until it disappeared; I staid there looking for the light; it was gone about a minute; I picked it up again right off; it was then off the weather bow about three or four points; I could not see the colored lights then; I watched it until he pointed for us; then I hailed the captain that he was coming square for us; I then told Nolan to call the watch, and told the man on the look-out to ring the
171 bell; I then went and called the watch myself; I did not know whether Nolan had called it or not; then I waited till two of them had got on deck; then I started aft to call the mate and the cook; the first of it I took pretty easy till after I called the men and saw that he was coming into us; I called the three men in the watch below; I do not know who the wheelsman was of the propeller that I had this talk with; I saw Nolan put both of their names down in a book; I do not know who the look-out was; these statements which I have sworn to were made freely; the man on the lookout made them in answer to
172 questions; the wheelsman made them voluntarily and freely, talking pretty loud; I was never on a steamboat but once before this; I saw nobody in the engine-room or about there; I was not there fifteen or twenty minutes or half an hour; I was not there as long as that; it may be four or five minutes that I was around there; when I asked the captain to take us alongside of the barque, I done it on my own account; I did not tell him that I was second mate; I did not hear the captain of the barque ask him to take him alongside; there are 32 points of the compass, I can box the compass.

173

RE-DIRECT.

Q. Did the lookout leave his post on the barque after ten o'clock?

A. Not after five minutes after ten o'clock, after the wheel was relieved; the man on the look-out generally attends to the blowing of the horn and ringing of the bell.

Q. Does this interfere with his duties?

A. No, sir; that is what he is there for.

174 (Signed) GEORGE STEDMAN.

It is admitted that the foregoing testimony was taken subject to such objection as should be made at the reading as to competency and relevancy, whether noted at the time or not. That the Commissioner examined the witnesses, Henderson and Captain Stedman, in the case of Nolan *vs.* the propeller Colorado. That the testimony was read over to them before signing, and that they signed it. That Henderson said on that examination, "when I went below it was raining and very hazy," and "that after I got on the propeller 175
the weather was thick, foggy and murky."

Bernard Carlin. Sworn,

My name is Bernard Carlin; I am 34 years of age; I am a grain inspector; I reside in Chicago, Illinois; I visited the propeller Colorado with Capt. Stedman, on the 1st of June, 176
1869, between six and seven o'clock, or thereabouts, for the purpose of measuring the paint on her bows; the captain could not do it alone, and he asked me to go with him; she was then moored on the north side of the Chicago river, between Wells street bridge and Clark street bridge; we took a tape line in a small boat, and the captain stood at the stem and I went as far as I could see any green paint on her; the last paint that I could see on her was twelve feet seven inches from the stem; it was in blotches, and ground in with the white paint on the propeller; this was on the starboard side; 177
I saw that the port side showed some scratches of the paint; the Colorado was painted in the spring of 1869, in the slip back of Central Elevator B, in this city; I saw them painting her; she lay there in the slip all winter, and I saw her almost every day; she was painted white; there was scratches on both sides of her bow, as if she had come in contact with some hard substance; I did not notice how far these scratches extended; sometimes they were small and sometimes in long streaks. 178

CROSS-EXAMINATION.

This was all the measurement that I made; I went and came away with the captain, and this was all the measurement that was made in my presence; I made no memorandum, except a statement or affidavit which was not sworn to; this I made at the time; I did not see that the bows of the propeller was
179 splinted any.

(Signed) BERNARD CARLIN.

John Henderson, recalled:

Q. State whether you had any conversation with the wheelsman of the propeller about the barque running into him, and if so, what was said?

(Objected to.)

A. I had no particular conversation with him; I heard
180 him pass the remark, that he would be damned if he would like that jibboom to come into him; I should judge the propeller was running about five or six miles an hour.

Neil McCollum, recalled:

Q. What do you mean when you say the barque would make within ten points of the wind?

A. I mean it would work ten points, or five points on either side; if the wind was south that it would work five
181 points on either side.

Q. Whose business is it on sail vessels to blow the horn and ring the bell?

A. The man on the look-out.

Q. Does it interfere with his duties at all?

A. It does not.

RE-CROSS.

182 *Q.* Did Mr. Brown come to you and ask you to make an

explanation of your statement about running by the wind, or did you call his attention to it?

A. He called my attention to it.

(Signed,) NEIL McCOLLUM.

Testimony taken before Wm. D. Wilkins, U. S. Commissioner. at Detroit, April 11th, 1870.

183

Daniel McKinnon.

Thirty years of age; my home is in Canada; I am a sailor; have sailed five years on the lakes; last year I sailed on the "Guiding Star," of Oswego; "James Garrett," of Chicago, and on the barque "H. P. Bridge," of Detroit; I shipped on the Bridge before she came out; I remember her collision with the "Colorado;" I came on deck that evening at about eight o'clock. or a little after, when the watch was called; I took the wheel after 10 o'clock; it was my turn at the wheel from 10 to 12 P. M.; the Bridge had splendid lights—the best I have ever 184
seen without any exception; a green and a red light; also. a binnacle-light and a light on the forecastle; when I went on deck think she was on the port tack; and I think we put her about before the other watch went below; she was on the starboard tack when I took the wheel; from that time, until the collision, my course was "full and by;" the wind wasn't steady, but kept hauling to the southward; from 10 o'clock until about the collision, the wind which had been to the westward kept working more to the south; from ten o'clock until the collision, we were by the wind; we couldn't keep 185
our course; from the time the wind changed to the southward, our course was S. E. by E.; that was my orders, and to keep a good full on her; I observed our captain that evening; he was on deck; I didn't miss him off the deck that watch, that I remember of; he was on deck and aloft, in the rigging; I remember hearing the whistle of the propeller; cannot tell how many times I heard it, as I was not paying attention to it, but was minding my wheel; besides the captain, the second mate, a man named Nolan (a sailor) and I were on deck; 186

don't remember the sailor's name; he was keeping a look-out; cannot exactly tell what speed we were making; we were not going fast; we might have been making four miles an hour; on our vessel they signalled the propeller by blowing a horn twice at a time; we also rung the bell pretty hard before she struck us; I cannot tell how many times that horn was sounded; cannot tell how long the horn was sounded before I saw the Colorado, as I was minding my wheel and canvas;
187 we were sailing under our foresail, mainsail, mizzenjib, flying-jib and foretopsail; we heard the horns of other vessels; can not tell how many; there was quite a fleet of us; the first I saw of the propeller was her clear light; just as soon as I saw it, or thereabouts, I saw her whole lights; she was bearing right on to us; when I saw her clear light she was about four points to windward of us.

Q. From what direction did the whistle appear to proceed before you saw the light?

A. It appeared from our weather-bows.

188 I cannot tell now the propeller was heading when I first saw her; I cannot tell what you mean by "parallel," "stem on," or "at an angle;" I know how she *did* strike us; she struck us stem on our beam; she struck us about the main chain plates; when she struck I helped our captain to lower away the boat to get into it; I got into the boat, then went back to the barque and got my bag of clothes; passed it to one of the boys on board of the Colorado, and then went aboard myself; I got into our main rigging and stepped on her anchor-stock, and with the assistance of a line they hove me I got aboard; can-
189 not tell how far up the rigging I got to get on board; I saw the light on the Bridge after I got on the Colorado; cannot tell how long it remained in sight; I first went into the propeller's cabin, was ordered out and went in to the wash-room, stayed there quite a while, and when I came oat the Bridge's light was gone; cannot tell how fast the Colorado appeared to be coming when she struck us.

Q. How fast; one, two, three, four, or five miles an hour?

A. I wouldn't like to say.

190 I heard the hail from the Bridge to the Colorado; the hail

was to shove the wheel hard a starboard and back her; I did not hear any reply; I could not tell whether the order was obeyed.

Q. Was the signal of the Bridge in answer to that of the propeller, or were they blown indiscriminately?

A. I could not tell; we could hear the steam whistle, and our orders were to blow twice every time we heard the whistle.

I didn't see the cut, and cannot tell whether she struck us 191
square or canting to one side; our second mate rang our bell pretty hard just before the collision.

CROSS-EXAMINATION.

Live in Huron county, Canada, Stephen township; have sailed five seasons up here, always before the mast; have wheeled on propellers, but not much; from eight till ten that night I was walking around the decks some, and was aloft 192
some; I relieved Mr. Nolan at the wheel; this sailor man, whose name I don't know, was on the watch; I heard the captain give him strict orders to keep a good lookout; we had taken in some sail before I went to the wheel, and Nolan and the second mate clewed up the fore squaresail afterwards, and left it hanging on the gear, without furling it; they were not busy at the sails from the time I took the wheel until the collision; the master would stand by me to see how she headed; would sometimes get up on the cabin, and sometimes walk to windward; I don't know of his going below to light his pipe; 193
don't know that he smoked; I know, as far as that is concerned, he is a good, careful man with a vessel; I had sailed with him from Chicago to that point.

Q. That is all the sailing you ever did with him?

A. I don't know; I have sailed with a good many.

When my watch commenced at eight o'clock our vessel was in Lake Huron; am sure of that; can't tell about where on Lake Huron it was, as I have not got any pilot-papers yet, and am not supposed to know; I have no other answer to give 194

than that our vessel's course was by the wind when I went on watch.

Q. Have you any other answer to give than *that?*

A. No, sir.

The wind was from the S. W., as near as I could judge, or thereabouts; I went to the compass; I went to haul aft the mizzen-sheet; that was after our watch had come on deck; cannot tell how long after; I am not supposed to know every-
195 thing; a man before the mast is not supposed to know the time when he does everything; I have no other answer to give; when I went after hauling the mizzen sheet I can't tell whether it was nearer eight or ten o'clock, as I didn't carry any watch

Q. Have you no other answer?

A. No, I have no opinion.

Q. How do you know the heading of the vessel when your watch commenced?

A. Anyone is supposed to know the heading of the ves-
196 sel by looking at the compass.

Q. Which compass did you look at?

A. The one the vessel steers by.

Q. Where is that?

A. On board of the barque Bridge.

Q. I ask you again, where was the compass you looked at when you went aft to haul the mizzen-sheet?

A. It was aft of the cabin, in the binnacle.

Q. Did you stop there and talk with the man at the wheel?

197 *A.* It is not any of your business whether I did or not.

Q. Had you any business at the compass?

A. No; no business that I know of.

Q. When you first heard the whistle of the Colorado where was the captain?

A. I was watching the vessel; I wasn't watching the captain.

Q. Where was the lookout?

A. I could not steer the vessel and look after the look-
198 out.

Q. You don't know where any of them were on deck, do you?

A. Yes, sir.

Q. Any of them standing beside you when you first heard the Colorado's whistle?

A. Not as I remember of.

Q. Would not you be likely to remember if they were?

A. If it was when we went into Milwaukee, I might remember; but it is quite a while since, and I cannot testify. 199

Q. Is it your business to look out for whistles?

A. No, sir.

Q. How could you tell which way the whistle was?

A. Because I had ears to hear.

Q. Could you, not watching for whistles, tell whether a whistle was on the port bow or on the starboard bow?

A. Yes, sir; there is no difficulty in telling whether it was to windward or to leeward.

Q. How could you tell?

A. By the sound of the whistle in my ears. 200

Q. How far was the propeller off when you first saw her?

A. I didn't measure the distance.

Q. About how far?

A. I couldn't exactly tell.

Q. Have you any opinion about it, whether it was one rod or fifty?

A. Well, I know it was more than a rod.

Q. Was it ten rods?

A. I didn't measure.

Q. In your judgment was it ten rods? 201

A. I think so; according to the best of my belief it was ten rods.

Q. Any more than that?

A. It might have been for anything I know.

Q. Was it fifteen rods off?

A. Well, I couldn't swear positively as to how far it was off.

Q. If you have any judgment about you, tell how far it was off? 202

A. I have some judgment about it; my judgment says it was over ten rods.

Q. Was it over fifteen rods?

A. Well, I didn't measure it, and don't know.

Q. You said you saw her hull about the same time you saw her bright light? Did you see her colored lights at the same time?

A. I saw her clear light first, sir, I seen her red light, and
203 then I seen her hull. That is as good an answer as I can make.

Q. Did you see her green light at all?

A. Yes, sir; I saw her green light.

Q. How soon after you saw her red light did you see her green?

A. Well, I couldn't anyways tell that; it wasn't long.

Q. What was the last order given to you at the wheel?

A. The last order the captain gave me was to keep a good full on her, and then when she was heading into us, he
204 told me to shove her wheel hard up.

Q. Did you shove her wheel hard up?

A. I forget whether I had it hard up or not when she struck us.

Q. What is your best impression, whether you had it hard up or not?

A. I disremember whether the wheel was hard up or not.

Q. How far off was the propeller when he told you to put your wheel hard up?

A. I didn't measure that distance.

205 *Q.* About how far off do you think she was?

A. About the time I was putting my wheel hard up the second mate and the captain were shouting to them to back her up.

Q. Could you see the hull and lights of the propeller at that time?

A. Yes, sir; I could read the "Colorado's" name.

Q. By her lights or yours?

A. By her lights; I could read her name as I was putting
206 her wheel hard up as she struck us.

Q. Where was the captain at that time?

A. When he gave me them orders he was standing on top of the cabin.

Q. Who rang the bell?

A. I was aft at the wheel when the bell rung.

Q. Do you know who rang it?

A. I heard the second mate say he rang it.

Q. Where was the second mate when you had the order to put the wheel hard up? 207

A. I think he was forward.

Q. Do you know where he was?

A. I could hear his voice forward.

Q. Was the order to put the wheel hard up before or after you heard the bell ring?

A. He rung the bell before I had the order to shove the wheel hard up?

Q. How long before?

A. Oh, not over a couple of minutes or so.

Q. How did the propeller bear when you first saw her? 208

A. I wasn't aboard of the propeller until she collided with us; not at that time.

Q. Have you any other answer to give to that question, sir?

A. No, sir.

Q. What kind of a night was it?

A. It was quite smooth water.

Q. Well, sir, a full moon?

A. I disremember; if it was a full moon it didn't shine; I didn't see any moon that I remember of; I saw stars; part 209 of the time it was clear the stars would shine; it wasn't a clear night, or a moonlight night; there was some fog.

Q. What were you blowing your fog horn for?

A. To let approaching vessels or propellers know the tack we stood on.

Q. What did you shorten sail for?

A. Well, it looked like a windy night; there was quite a breeze aloft.

Q. Now, wasn't it quite a foggy night? 210

I sailed on; she hailed from Detroit, Michigan; I shipped on her the 3d day of May, 1869; I shipped as seaman on a voyage from Chicago to Buffalo; I did not sign any articles, but had the preference to come back in her; I was hired by the mate, and I was to receive fourteen shillings per day, or $1 75 per day; there was no length of time specified; I told the mate I did not wish to ship if the crew were to be paid off in Buffalo; he answered, that the captain did not make it
219 a habit to pay off his crew in Buffalo; that he kept the men by him, and that the vessel was going to Saginaw for a load of lumber; on these conditions I shipped with him; he said after the vessel was loaded at Saginaw, the vessel was going to Chicago; I served on board of her nine days, or up to the time of the collision with the Colorado; this occurred about 11:50 on the night of the 11th day of May; about five minutes previous to the collision I heard the sound of a whistle on the starboard bow; I supposed it to be either a propeller or a
220 steamer; shortly after, I saw her light one point on our starboard bow; I supposed it to be a mast head-light from a steam vessel; in a few seconds, probably two minutes, I saw the same light, or supposed it to be the same; a few seconds after that, the man on the look-out sung out, "That light is almost ahead;" saw it again bearing upon two points on the starboard bow; our fog horn still kept going with two distinct blasts, and answering the propeller's whistle every time she blew or sounded; saw the mast head-light and the propeller's starboard light; then in an instant, all these lights were visible, coming right on to us; I sang out, at the top of my voice,
221 "Back her and stop her also;" the second mate did the same; we received no response; I then ran forward and rang the bell, not knowing where she was going to strike at the time; I knew that whenever she would strike the vessel it would sink her, as she had a heavy deck load of pressed brick; I ran aft to be near the boat so that I could get onto her if required; about this time the mate sang out, "Call all hands;" I saw but one man come aft at the time, and I ran forward to see if there was any one asleep in the forecastle; as I was passing
222 the propeller's bows she struck the vessel forward of the main

rigging, capsizing the brick on deck and throwing me down on deck; I went to the forecastle scuttle, sang out to see if there was anyone down there, then came back again to the propeller's bow; I was afraid to cross the bow, for fear there might be a hole in the deck that would let me down; I then jumped up on to the barque's rail and got hold of the propeller's anchor stock; I stood a couple of seconds on the rail looking to see how I could best get aboard of the propeller; at the same time I felt that the vessel was sinking under me; I 223
jumped for the anchor stock, and got hold of it with both my arms, then I saw that I had no foothold; I sang out to the men on the propeller to hand me a line; at the same time I heard some one sing out that the barque was sinking; still singing out for a line and looking to the propeller's rail, I saw some men looking over the rail; none of them offered me a line or even spoke to me; one of our own crew was on the anchor stock at the time, but I had not seen him previous, and he helped me up to the ring of the anchor; he says, "You help me up and I well help you up and we will get aboard." 224
This man's name is L. H. Erskine; I stood up on the ring of the anchor and sung out for a line, but received no response from any of the propeller's crew at that time; one of our own crew, John Henderson, was on board the propeller at the time and heard me halloo when I hallooed the last time; he looked out over the rail and sung out, "Is that you Nolan? give me your hand," and by his assistance I got on deck of the propeller, and not by the assistance of the captain of the Colorado, as he reports, as he made no effort to save any man, neither he 225
nor his mates; his boats were on deck instead of being on the davits; all the men saved themselves with the assistance of each other. John Henderson was looking around for a rope to pass over the bow and I lent him a hand; we could not find any line; found something in the shape of a hawser forward, and passed that over to enable the rest of the crew to get on board; I asked who had the watch on deck of the propeller; I was told the mate; I asked what boat that was; I was told the Colorado; I asked if the captain was on deck; a man answer- 226

ed me from the forward part of the pilot-house, and said, "Yes;" I asked him if he was the man; he said, "Yes;" I asked him if he heard our fog-horn; he said yes; I asked him if he had heard us hail him, "Back her and stop her;" he said "Yes;" I asked him if he heard our bell; he said, "Yes;" I asked where the man was on the look-out; I was shown the man; I asked him if he heard our fog horn, and he said "Yes;" I asked him how many blasts of the horn he heard at
227 one time; he said he heard two, but he did not know what
21 tack we were on, that he did not understand the fog horn. I asked him if the mate had not instructed him, and he said "no," for he did not know himself. The barque's boat was lowered away by this time; they were singing out for a line, but could not get any for some time; I picked up a heaving line on deck myself; threw one end of it to the boat and made the other end fast to the propeller's foretop mast's back stay, at the same time telling the mate to hold on the boat; if I could
228 get a line to go aboard of the boat I would go and look for our clothing, but I could not find any line; John Henderson says, "Yes. Nolan, and I will go along with you." I asked the captain of the propeller if he would lay by us until we could get our clothes, and he says, "yes;" I said, "Why don't you stop her and not keep backing away from the vessel?" He said "She is stopped and is only drifting." Some one from the hurricane deck sung out "Men get in the boat and go and look for your clothes, and I will lay by you." For that reason I would not go, because I knew if I left the propeller I would never live to tell
229 the tale, for neither he nor his mates made any effort to give us a line nor to give us any assistance; then the boat was dropped to the after gangway; I went across to the starboard bow and saw a foam on the water, which we supposed to be a part of the vessel's cargo of oats which came out of the hole which was made by the propeller. Looking close on the rail I saw the barque's binnacle light; I saw the foretop sail get aback; she hove around heading to the land, showing her green light and giving a heavy lurch. I supposed she sank at the time. In a short time after I could see no more of her lights; I then went toward the
230 boat on the port gangway. The boat's crew were still singing

out for a line. I asked several times for a line on board of the propeller; the man that was at the wheel in the propeller at the time of the collision told me to go down aft with him on the lower deck and he would get me a line. He took me down clear aft behind a lot of freight and got a five or seven-inch hawser, and this was the handiest line we could get for the men to get up by. The crew got out of that boat by means of that hawser at the time they came on deck; they were met by a warm welcome from one of the greasers or oilers, I do not 231
know which, with "God damn them sons of bitches, what do they want here? God damn them." Not knowing at the time who he was addressing his conversation to, I asked if he was officer of the deck, or who he was. He made no answer, but went into the engine room; the mate told me afterwards that he heard the same words (all the statements made by the witness as to what third persons said objected to, unless they were officers of the propeller.) The name of the mate was Neil McCollum; after we were all on board in the wash room the man at the wheel of the propeller. at the time of the 232
collision, was there, and I asked him how she was heading when she struck us; he said he did not know at that time; he said some time before he was steering northwest and northwest by west more of the time, and in fact, boys, to tell you the truth, I could tell you how she was heading, for when we saw that jib-boom and bow-sprit of yours, that was what we were looking out for, for we were afraid she would strike us; put that jib-boom of yours through us and it would sink us, and that was what we were looking out for." After that, the engineer came in and renewed the subject; said that she was 233
under a slow check; that he was working only one engine at the time of the collision; the next morning I got to talking with the engineer about the collision; he allowed the mate did what was very proper; I asked him how; he said by backing on one wheel and going ahead with the other; I told him that was neither prudent nor proper; that the government rules called for stopping and backing, and moreover he allowed last night she was working only one engine; I asked him
234

what engine he backed on; he said on the starboard engine, and went ahead on the port engine; I told him that would not stop her; then he left, and the wheelsman renewed the subject, and said that the mate told him first to put his helm to port, and then hard to starboard, at the same time sending a man off the deck to help him; I asked him where the captain was at that time; he said he was just come out of the wheelhouse just at the time she struck; I told him it I had
235 anything to do with the law I would have that mate arrested
2 for manslaughter; that he was not a competent man to have charge of lives and property—a man that did not understand another vessel's signals. At the same time, he began to praise the mate, and said he was the best man he ever sailed with. I asked him why. He said he had gone into that wheelhouse with a newspaper and read till he fell asleep; slept some fifteen or twenty minutes; woke up and found the boat on her course, and the mate was never near the compass; at the time of the collision the barque was the best vessel on the lakes
236 that I have ever been in for lightness, gear, living and comfort for men: she had a full complement of men, officers, etc.; she was over twenty tons burthen; her lights were good for an hour previous to the collision; her signal light was a green light on the starboard in a lamp frame, and red light on the port. Each cast a light from two points abaft the beams forward through ten points on its own side, according to regulations; of a clear night they could be seen for five miles; they were the best lights I ever saw aboard of a vessel; they were hung on the mizzen rigging; I should think they
237 were hung about five feet above the main deck; she had been sailing about an hour and a half previous, about southeast by east with starboard tacks aboard; I was then at the wheel; at the time of the collision she was sailing by the wind; the wind was about south; at the time of the collision we were sailing about three knots an hour direct with the wind; the wind was blowing about four or five knots an hour; we had the light-sail and fore-sail hauled up. The main-sail and mizzen-sail and foretop-sail, mainstay-sail and jibs were on her at the
238 time of the collision; I should think she was headed southeast

by east; the propeller was going full six knots at the time of the collision; I should think she struck into the barque about ten feet; it was close to the main rigging; she cut away the forward shrouds to the main rigging, and between the centre board box and the mainmast; the weather was foggy, lightening up at different intervals; it was sometimes heavier than others; the collision occurred some forty or forty-five miles off Thunder Bay Islands; it would, I should judge, have taken us about eight days to finish the voyage to Buffalo, and some 239
fifteen days more to have completed the voyage going to Saginaw and getting on lumber and returning to Chicago, according to the usual course of voyages of that character; the schedule of property attached to the libel is a correct account of clothing, etc., that I had on board the boat, and which was lost, and the values are correctly given; the foghorn had been sounded on the barque previous to the collision for two and a half hours, at intervals of one to two minutes; after we heard the whistle of the propeller about five minutes before the collision, 240
it was blown several times a minute; the signal blown from five minutes previous to the collision was two distinct blasts; this same signal had been blowing for the two hours previous; Joseph Wood, John Henderson and Lincoln Erskine were on board the barque as seamen at the rate of fourteen shillings a day; I was present when Wood and Henderson shipped; they were bound on the voyage from Chicago to Buffalo; they had property on board the barque; they lost all they had except what is on their backs; the propeller blew one sound of the whistle. 241

CROSS-EXAMINED BY GEORGE C. BATES.

I signed shipping articles as common seaman; I did not read the articles; I believe they were lost on the vessel; from the time I had my supper till eight o'clock I was below; then I was two and a half hours at the wheel; after this I was on deck on duty, which consisted in furling the gaff topsail, etc. 242

The weather was very foggy; I did not see any moon; the weather was foggy but I could see the length of the vessel; I could see the look-out from the wheel; there had been a light rain; the fog set in about three hours before the collision; the captain and second mate had charge of our vessel; Lincoln Erskine was on the look-out; I do not know the name of the man at the wheel, or where he is now; the crew consisted of six men, besides the captain, two mates and steward; I do not
243 know the name of the steward, but think his name was Jones; I do not know where he is now; I do not know where the cap-
2 tain and two mates are now; when I first heard the whistle I do not know how the ship was steering, as I was not at the wheel, except as the man at the wheel told me; after we heard the first whistle the barque kept on her course until the collision; there was nothing done on the barque to prevent the collision except to keep the fog-horn blowing, and a good look-out kept up; it was probably about three or four minutes after we heard the whistle of the propeller till we saw her lights; it was
244 a very short space of time after this till we saw her side lights; I do not know how often the propeller sounded her whistle; I heard it some three or four times; I heard something jingle on board of the propeller, but I do not think it was her engine bell, as I do not think she had any bell aboard of her; I came back to Milwaukee in the propeller; the propeller was about one point on our starboard bow when I first heard her whistle, and about the same time I saw her masthead light; I was standing when I first saw the masthead light holding up the foresail under the foreyard; the captain of the barque was at
245 this time on the poop; the mate was below; the second mate was on deck helping to haul the foresail; the look-out was on the topgallant forecastle blowing the horn; the steward, John Henderson, Joseph Wood and another man, I do not know his name, were below with the first mate.

Q. State now what orders were given on the barque, by whom they were given, and what they were from the time you first heard the whistle of the propeller until the collision occurred, and how those orders were executed?

246 *A.* The second mate and the captain gave the order to

keep the fog-horn going, and the man at the horn executed them; I rang the bell on the barque and called out to stop her and back her; the second mate also called out to stop her and back her; no one directed or ordered me to ring the bell; I do not recollect the captain giving any orders except to keep the horn going; after I rang the bell I ran aft so as to be near our boat, as I saw there was going to be a collision; I do not recollect that any one else ran aft at the time I did; the second mate and captain were aft at the time I got there, I do not know 247
the name of the man at the wheel; he remained at the wheel at the time the collision occurred; I have stated all that occurred on the barque from the time we first heard the whistle up to the time of the collision to avoid a collision; I think the man on the look-out jumped down and called the men, when the second mate gave the order to call the men from below, just at the time of the collision; I could not say how long it was after the collision till I got off from the barque; it was a very short time; I thought I was the first man that left the barque, but I found that there were two who had got aboard 248
of the propeller before I did; the rest were still on the barque; when I got on to the stock of the anchor I called to the men who were right up over me, and which I saw, for a line, but they paid no attention to me; I called a number of times for the crew of the propeller to throw me a line, but they paid no attention, and did not throw me a line, nor assist me in any way; the officers and crew of the propeller did not make any effort to help save any one; there were other men on the barque who called for a line, but none of the officers or crew of the propeller offered to help them or throw them any line; 249
it might have been fifteen minutes from the time of the collision before the whole of the barque's crew got on board of the propeller; the captain, mate and second mate, and the man at the wheel were in the boat; I am not certain whether the man at the wheel was in the boat or not; the officers and crew of the propeller made no effort to aid the officers and crew of the barque in getting off from the barque; I do not know how long it was after the collision before the barque's boat was lowered away; I could not find anything but the 250

heaving line, which I threw to the small boat as she came alongside; I asked a crowd of men, black and white—her crew—who had the watch on deck, and I asked the watchman, the look-out; I then asked all hands, no one in particular, if the captain was on deck; a man at the wheelhouse, representing himself as the captain, replied that he was; these men were on the hurricane deck, abreast the wheelhouse, or forward of the wheelhouse, at the time I put these questions; it
251 was the man at the look-out who told me he did not know what tack she was on, and who did not know about the foghorn; and when I asked him if he had not been instructed, said that the mate did not know any more than himself; I do not know where the mate of the propeller was at this time; the man who made these remarks to me stood at the forestay of the propeller; how far from the pilot-house I cannot say; I asked the captain if he did not hear our horn; he said, yes; I asked him if he heard us sing out, "Stop her and back her;" he said, yes; I asked him if he heard the bell; he said, yes; I
252 asked him why he did not back her; he said he was backing her. That is all the conversation I had with him at this time. I asked the group of men standing around for a line, but none of them paid any attention to me; a man came out of the wheelhouse and asked why they did not give me a line; I then asked the captain of the propeller if he would lay by and let us go for our clothes; he said, yes; I then asked the captain why don't you stop her, and not keep backing away from the vessel; he said she was stopped; I said it does not look like it the way we are going away from the vessel; he
253 said she was only drifting; this was all the conversation I had with the captain till some man sings out from the hurricane deck: "men go and get your clothes and we will lay by you."

Q. Why did not go, as directed, back to the barque and get your clothes?

Because I was afraid we would not find the vessel again, as she was in a sinking condition, with a heavy deck load of brick; we knew she must soon sink, and providing we should find her, she might sink with all of us aboard while we were
254 finding our clothes, and seeing they made no effort to rescue

the crew on board the propeller, the thought struck me that he wanted me to leave the propeller with the expectation that we would never tell the tale; this was my objeet in not going aboard of her; I lost sight of the lights about fifteen or twenty minutes after she struck, and before the propeller continued the voyage; it was fifteen or twenty minutes from the time of the collision till the boat's crew got on board the propeller.

Q. Who aided and assisted the boat's crew to get on board the propeller? 255

They got out of the boat themselves, with the aid of the hawser which I and the wheelsman got out to them; a number of the deck hands of the propeller, black and white, heard one of the oilers or greasers say to the boat's crew, "God damn them sons of bitches, what do they want here, God damn them;" the mate of the barque told me afterwards that he also heard the same words.

Q. State who was present in the wash room of the propeller at the time you asked the man who had been at the wheel how the propeller was heading at the time of the col- 256 lision?

Our own crew; the mate and second mate, and forward hands.

Q. What did the man who had been at the wheel answer to you at that time?

He said that he could not tell how she was heading at the time she was struck; sometime before that she was heading northwest and northwest by west. He said he was afraid that jibboom of ours would "run into us and sink us," and to tell you the truth boys, we were looking out for ourselves. 257

Q. Did the engineer come in before this conversation was finished?

He came in just as it was finished; it was in the wash-room. The next morning, I had the conversation which I have detailed in my examination, with the engineer.

Q. Who was present in the morning, in the wash-room, when you had the conversation which you have detailed in your examination in chief, besides yourself and the engineer?

Our crew and the first and second mates; I think there 258

were some of the crew of the propeller there also; at the time of the collision we were going about three knots, and the wind was blowing about four or five; we were under short sail; the propeller was going about five knots or miles, and we were, I should judge, about forty five miles southeast of Thunder Bay Islands, or in a southerly direction; I have been a sailor on these lakes some ten or twelve years; I sailed last year on the lakes; I received last year, as wages, $2, $2 50 and $2.75 on
259 an average; I was doing nothing during the winter; I live in Chicago; I was sick part of the winter; the schedule of the articles lost contains a correct list of them, and the prices I paid for them; I bought the black coat, pantaloons, vest, overcoat, hat and boots last fall: I had the work coat or jacket the summer before; the working pants; I got one of them last summer and one the summer before; the woolen shirts; I had one of them last summer and two of them last fall; the officers and crew of the barque all came up on the propeller to
260 Milwaukee; the barque had on board sixty-five thousand of pressed brick; I don't know how many oats she had; her hold was full.

(Signed,) P. W. NOLAN.

Lincoln H. Erskine.

My name is Lincoln H. Erskine; my age is 24 years; I reside at Rockland, Me.; I am a seaman; I was on board the barque H. P. Bridge, the last vessel I sailed on; I was shipped in Chicago by the mate, and signed the shipping pa-
261 pers on the third day of May, 1869, for a voyage from Chicago to Buffalo; we started on a voyage, but did not reach there on account of a collision between the barque and the propeller Colorado; I was seaman on board of the barque, and on duty at the time as look-out, and had been for over three hours; the collision occurred on the night of the 11th of May, somewhere about 11:30 or 11:40 o'clock; the second mate and captain were on duty on deck; the captain's name is Stedman; he had been on deck the whole watch from 8
262 o'clock until the collision; I was stationed on the top gallant

forecastle and remained there all the time; I had sighted a vessel to leeward before it shut in thick; the weather shut in thick and at intervals would lighten up; when I first came on deck it rained; at the time of the collision the wind was about south, and had been blowing in that direction for ten hours; we were going about three knots; we were under light sail; we were heading about S. E. by E. on the starboard tack; she had been on that tack about three hours; I should judge we were about forty miles from the Thunder Bay Isl- 263
ands; I do not know whether there was a light there or not, as I am not acquainted here; the vessel did not change her course after we were on this tack; I heard the whistle of the propeller about five minutes before the collision; I heard this whistle a number of times, probably five times, and answered it with the fog-horn; the mate came up where I was and told me to blow it often and keep it going; I had been blowing the fog horn at intervals; after I heard the whistle of the propeller I blew it as often as five or six times a minute; I should say that the horn could have been heard at least half a mile 264
against the wind, and as there was not much wind, it ought to have been heard a great ways off; I had been blowing two blasts on the horn according to the second mate's orders for the starboard tack; the first that I saw of the steamer, I saw her light about a point and a half on our starboard bow; in a moment more I saw her hull and starboard light, and I knew she was going to strike us; I jumped down off the topgallant forecastle and halloed to the men below that there was a steamer coming into us; I then started off and stopped about midway between the fore and mainmast to see where she was 265
going to strike; I hauled off my coats and threw them down on the deck, expecting to have to swim for it. This was about the time she struck; I then started for the steamer's bow, and got hold of the steamer's anchor stock, got part way up and sung out for a line; I could see a lot of men looking over the bow; about the same time Nolan came along and sung out for me to give him a hand; I reached down and helped him up on the anchor stock; he then got up by me; I gave him a hand to get up; as soon as I got on to the propeller's rail I 266

took the bight of a hawser which was forward and put it over the steamer's bow; by this time the crew was all on board except the mates and the captain; I then asked a man which I took to be a mate or watchman, if he heard our horn; he said yes, but he did not understand it; I then told him that a man that had charge of a vessel ought to know the signals to know what tack a vessel was on; I was sitting on the rail when the steamer backed off from the vessel; this was prob-
267 ably about ten minutes after she struck until she backed off out of sight of the vessel; I then went aft and helped hoist the boat up; Nolan hooked the boat on; the reason I did not dare go down over the bow was, I was afraid she would back off and leave me; I was hallooing out for them to hold on, and did not hear any reply, and this is about what I heard the wheelsman say the next morning in the washroom; we were telling him that the mate of the propeller was not competent to go mate of a steamer, and he said he thought he was, he always used him well; he said he had been in the wheel-house
268 reading a newspaper at the wheel and fell asleep and slept fifteen minutes, and the vessel was going on her tack when he awoke, and the mate never looked at the compass; the bell was rung on board the barque, and we hailed the steamer, and the mate sung out, "Stop her and put your wheel hard a starboard." This was, perhaps, nearly a minute before the collision; the propeller was then within a length and a half of us; I heard some one else hail the steamer but did not know who it was; at the time the steamer was hailed she was about two or two and a half points off our starboard bow; she struck us
269 a little slanting—about midships, just forward the main rigging; I should think she went at least about eight feet into the barque's side; the barque was a good vessel and perfectly seaworthy, as far as I could judge; her rigging and sails were good; she was well manned, showed a green light to starboard and a red light to port, placed in the mizzen rigging; they each cast a light about two points abaft the beam; the barque was over 400 tons burden; she had her hold full of oats and 65,000 bricks, which would weigh over two tons to the thou-
270 sand; I shipped on board for $1.75 per day; it would have

taken, in the usual course of a vessel, about eight days to have performed the voyage; I had my clothing on board the barque which is fully set forth in the schedule attached to the libel; I also had some money; the schedule referred to, contains a true list of the articles I had on board, and the true value of them.

I know Nolan, John Henderson and Wood; I don't know his given name; they were on board the said vessel as seamen, and were to receive the same wages that I was to have; they 271
lost all their clothing; there were efforts made to save the clothing; I was on the bow ready to go down if they would have given us a chance; I was afraid to go down for fear she would back off and leave us, and I didn't know how soon she would sink, and they didn't give us any encouragement on board the boat at all; it was posible for us to have saved our clothing if they would have given us a chance; the clothing was down below in the forecastle, below the water-line; I know that the hole cut in the barque was about eight feet below the water-line, as I saw the oats boiling out of her when 272
the propeller left her; the barque remained afloat about three-quarters of an hour; the last I saw of her she was abreast of us; I lost sight of the lights; she either sunk or was lost in the fog; the value of the clothing I lost was about $133.

CROSS-EXAMINED BY MR. BATES.

The shipping articles were printed, and were signed by all the crew; it was raining from about 8 to 9 o'clock; when I 273
first came on deck there was no fog; it was about 9 o'clock when the fog commenced, and it lighted up at intervals; the first I heard was a whistle which was about five minutes before the collision; this was answered by two blasts of the fog horn from the barque; the propeller answered it with a deep gurgling sound, not exactly like a whistle; the fog-horn was sounded often; the second mate was forward when we first heard the whistle, and told me to keep the horn agoing; I did not hear any orders given to the man at the wheel; at the 274

time the whistle was first heard the second mate and the men were clearing up the foresail, and I was told to keep on the top-gallant forecastle and keep the horn blowing; it seemed as if the propeller answered all our signals when I blew the horn; the barque had on at the time of the collision the mizzen, the main and the mainstay sail, the foretop sail and the jibs, and was going through the water at about three knots an hour; the weather was pretty chilly where I was; I should
275 think our lights ought to have been seen three lengths of the propeller ahead; when the shout was made to stop and back her, I should think the vessels were about two or three lengths apart from each other; when I saw the hull at first, I could not distinguish any more on the propeller; I saw the masthead light and the green light of the propeller; I could not say whether her wheel was in motion or not; I did not see any one on board the propeller until after the collision; at the moment of the collision I think the second mate was aft and the first mate below; the captain was on the house, and the
276 helmsman was at the wheel just back of the house; I did not hear any orders given by the captain or mate after she struck us; the captain and two mates were all that were in the boat, and I should think it was fifteen or twenty minutes after the collision before they got on deck of the propeller; I should think it was five or ten minutes after the captain and mates got on board when we lost sight of the barque; there was myself and Nolan went on the starboard side of the propeller; the rest of the men got up on the port side; there was no
277 effort made on the part of the captain or crew of the propeller to assist the crew of the barque to get aboard of the propeller after the collision; I did not hear any one say, "boys, go aboard and get your things and I will stand by you." I could not say who it was I asked whether he heard our horn; it was either the watchman or mate of the propeller; I sung out and asked the officers who were on deck if they would stand by and let us go aboard of the barque and get our clothing, but I could not get any answer from them; I did not hear at any time anything said by the officers about our going on board
278 and getting our clothing; at the moment of the collision the

propeller was going forward about five knots, if not more; after the collision it was probably ten minutes before the propeller backed off from the barque; I heard a creaking and crashing at the time she struck us; I should think it was about twenty-five minutes after the collision when the boat was got upon deck; Nolan hooked her on; the captain of the barque and the men assisted to get it up; the barque's boat was hung to the stern of the bark to her davits; the reason I did not wait and go off on the boat was because I was forward, and I 279
did not dare to go past the steamer's bow for fear I might fall below, and I tried to save myself; the mate, cook and three of the men were below at the time of the collision; some of them got up on the propeller on her port bow; I called them before the collision, but some of them were out on deck before I called them; I had a conversation with the wheelsman of the propeller, and he said he was afraid that the jib-boom was coming through the propeller, and that he would rather strike us than have us strike him; the officers nor crew of the propeller rendered any assistance that I saw to help the crew of 280
the barque aboard; I heard the second mate sing out to the propeller before the collision to stop her and starboard your wheel; the barque was about thirty feet breadth where the steamer struck us.

Q. Did you apply to the officers of the propeller for aid or assistance to enable you to save your clothing and property?

I did, but I got no answer. This application was made to no one in particular, but was addressed to the officers of the 281
propeller; the mate was standing on the hurricane deck, and the captain was standing on the deck above the cabins; I do not know who threw the line to the boat from the propeller, as I was forward; I do not know the name of the wheelsman who told me the mate was a good man, etc., beeause he had gone into the wheelhouse with a newspaper and gone to sleep, and the vessel kept on her course and the mate had not disturbed him; I have been a seaman for about ten years on the salt water in coasting and foreign voyages; I have sailed on 282

larger vessels than this barque. I first sailed on the lakes last summer; I was on board of sailing vessels all summer; I spent the winter in Wisconsin; I was receiving last summer from $1.50 to $2.00 a day; I was chopping wood all winter; the price of the articles lost by me is generally larger than what they cost me; I had six dollars in silver in my trunk; I am the claimant in this suit No. 534.

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RE-DIRECT RESUMED.

There were eight of the crew came on to Milwaukee; the first and second mates went on to Chicago, and the steward stopped in Milwaukee.

(Signed) LINCOLN H. ERSKINE.

Joseph Wood:

284 My name is Joseph Wood; I am twenty-eight years of age; I reside in New York city; I am a seaman; I have been a seaman about twelve years on the salt waters; I only sailed on the lakes since last spring; I have served on steam vessels on salt water as seaman; I was on board the barque H. P. Bridge at the time of her collision with the propeller Colorado; I shipped on board of her the third day of May, 1869, and signed shipping articles for a voyage to Buffalo; I was hired at $1.75 per day; we were on the voyage at the time of the collision; the first I heard was the bell of our vessel ring; I
285 was at this time asleep in my bunk; I heard Erskine sing out from the forecastle, "All hands come out on deck;" I jumped out and ran on deck, and saw the steamer coming on to us; I stood still looking at her about ten seconds when she struck us; then I went aft and saw some of our men getting up the bows of the propeller; I went up on the main rigging and got on her port chain cable; some one put a line over the bow and I got up by that; at the time of the collision the weather was very thick; when I first saw the steamer she was about ten or
286 twelve fathoms from us; she went into the barque I should

think eight or nine feet; I heard a heavy crash; I should not think that the vessels continued together after they struck more than seven or eight minutes, and they were working apart all of that time; in seven or eight minutes from the time they struck you could not go from one vessel to the other without a boat; I think I was on deck long enough to form an idea of the relative speed of the vessels; I should think our vessel was going about two and a half or three knots, and the steamer not less than five knots an hour; I do not know the course of 287
the vessel; the wind was light; I had all my clothing on board the barque when she was struck; the schedule annexed to the libel in my suit against the propeller contains a true account of the articles and of the values; some of them are put down at just what I paid for them; and they were new and worth all I paid for them; I asked our mate to ask the captain and mates if they would stay by us until we could go and get our clothing; they did ask the captain of the propeller, and he said yes; at the same time the propeller was backing away; at this time the two vessels 288
were apart and we could not go; the captain nor officers of the propeller rendered any assistance in trying to save our things; the last I saw of the barque was about twenty or twenty-five minutes after the steamer ran into her; at this time we could only just discern her and see her starboard light in the fog; she was off the steamer's starboard bow; I did not see any other lights aboard of her, and I could not see the reflection of any lights on her sails or rigging; I was on the propeller's starboard bow with Nolan, and looking at her; I went to the other side to look after the boat, and when I came back 289
the light was gone altogether; I was gone some two or three minutes; it was not long after this before the propeller proceeded on her voyage which took us further away from the barque; when I was in the rigging I thought I felt the vessel sink about one foot, but I did not know wher it was her sinking, or whether it was the vessel rolling; I heard some one sing out, "the vessel is sinking;" I heard the wheelman say that the mate told him to put the wheel hard a port, and afterward put it hard a starboard; this was while our vessel was in 290

sight; the officers and crew did not render nor offer to render any assistance to the crew of the barque in trying to save their things.

Q. How much service on propellers have you seen?

A. I have been on sidewheel steamers and propellers for over three years, and on more propellers than sidewheel ships, as a seaman and wheelsman.

Q. From your personal experience do you know in how
291 short a distance they can be stopped when they are going say six knots an hour?

(Question objected to as he is not an expert.)

A. A propeller can be stopped in going her own length if they stop her and back her; I have seen this done to avoid a collision; I have heard orders given in such cases and have been in the wheel-house at the time; I know the other men lost their clothing.

CROSS-EXAMINED.

292

I turned in about eight o'clock that evening; it was then wet and dull, rainy, no fog; could not see any stars; I should think it was not more than ten or twelve seconds after I came on deck before the collision, and about a minute after the collision I was on board the propeller; at this time the weather was pretty thick; I could see the steamer and her lights; I think when I got on deck all the other forward hands were on the deck; the captain and mate were in the boat; I do not know when the boat was lowered away from the barque; I
293 heard the captain sing out to all, "Come aboard of the boat." I should think it was about fifteen minutes before the boat's crew got on board the propeller, and about five, six, or seven minutes after the boat's crew got on board the propeller the barque disappeared; I did not have time to dress myself before the barque was struck; I took my boots and coat in my hand to get aboard of the propeller; I rushed straight from my birth up on to the propeller without waiting to dress myself; I did not see any assistance or efforts made by the crew of the
294 propeller to aid the crew of the barque to get on board, or to

save their things, and no effort was made by the officers or crew of the propeller to save the bark from sinking; nor was any effort made to keep her from sinking; the mate of the barque asked the captain of the propeller to lie by and let them go aboard and save their clothing; the captain said yes, but made no effort to go alongside of her again; when I got on the deck of the propeller she was going astern I think; she had drifted about two lengths of the propeller away from the barque when I last saw her; I heard no conversation among the offi- 295
cers of the propeller about the collision; I do not know who was the wheelsman on board of the propeller; the captain and mate of the propeller were on deck when I got on board; I do not know how long they had been there; I did not see who threw the line from the propeller to the boat; I never sailed on a propeller as first or second engineer; I have been a sailor and wheelsman on one; when I last saw the barque the weather was very thick, about the same as it was at the time of the collision; you could get from one vessel to the other for about five minutes; John Henderson was the first man on the fore- 296
castle; I had all the articles mentioned in the schedule in a canvas bag which I took on board with me; I had eight dollars in money in my pants pocket which was in the bunk, as it was too wet to carry about with me; it was in the propeller's wash-room that I heard the wheelsman say that the mate told him to put the wheel hard aport and then hard a starboard; I did not hear Captain Brett nor the mates of the vessel say anything about the collision; I should think that it was about half an hour after the collision that the propeller stood on her course; the captain's name of the barque was Steadman; the 297
mate's name was Neil McCollum; the second mate I only know by the name of George; I heard no conversation between the officers of the barque and the officers of the propeller as to how the collision occurred; some of the clothing I bought in New York last winter; the hat I bought there; it was a felt hat; the coat I bought in New York last winter; three of the shirts I bought last winter; one of them I bought about a year ago, and paid five dollars for it.

298

RE-DIRECT RESUMED.

The reason I ran up on deck was that I did not know how soon she would sink, still I would have like to remain for my things.

(Signed) JOSEPH WOOD.

299 CLAIMANTS' TESTIMONY.

Depositions taken in Buffalo on the 21st day of September, A. D. 1869, before George Gorham, U. S. Commissioner.

John B. Hall.

I live in Oswego; I am a sailor; been on the western lakes since 1855 as a sailor, except one season; I am 31 years old; been before the mast, wheelsman, first and second mate of propellers; been second mate six or seven seasons; been
300 first mate five seasons; not full seasons; been first mate three full seasons; been mostly in the Buffalo and Chicago trade; I was mate on the Colorado when she had the collision with the H. P. Bridge; had been on her all the season before and all that season up to that time as mate, sailing with the same captain, Brett; I had been mate on other propellers as well; the collision happened the 12th of May, 1869; it was 12 o'clock at night, and was the 11th or 12th; either the night of the 11th or morning of the 12th; I went on watch that night shortly after supper at 6 o'clock; my watch was to end at 1
301 o'clock; the collision was about 12 o'clock; I suppose it did not vary five minutes from that either way by our time, which I think was Buffalo time; the collision was about half-way across Saginaw Bay; the collision happened in a fog; the fog commenced shortly after 11, say a quarter past; at the time the fog commenced our course was north-northwest; just before the fog commenced our speed had been between nine and ten miles an hour—our usual speed; she could go faster if she was driven; the wind was about south when the fog set
302 in; there was quite a fresh breeze; there was not a great deal

of sea; it was a very dense fog after it shut in; such fogs have been very common on the lakes this season; I have seen it as foggy other seasons, but never more so; it was not rainy; before it altogether shut in I called the captain; he was in his room; he did not come on deck; he told me to tell the engineer to let her go slow, to blow the whistle, and to call him when the watch was out; I went aft; I told the engineer that it was thick, and to let her go slow, and I commenced blowing the whistle and took my station in front of the pilot-house; the 303
whistle was just forward of the smoke-stack; it was a very fine whistle—none better on the lakes; it is twelve or fourteen feet from the promenade deck; I sounded it by a cord which runs to the pilot-house; one branch runs alongside of the pilot-house, and one on top of the house; I could sound it standing in front of the pilot-house simply by pulling on the cord; I sounded the whistle up to within a minute or two of the collision; every one to two minutes, probably I blew it as often as once a minute; Armstrong was at the look-out, and Ben. Walsh at the 304
wheel; Armstrong was stationed on the promenade deck forward—as far forward as he could conveniently get, probably six or eight feet from the stem; there was no change at the wheel; Armstrong remained on look-out till I called him to the wheel; the speed of the vessel was checked; after she was checked her speed was four to five miles an hour; her course after the fog shut in was north-northwest; this fog continued down to the moment of the collision; I heard other horns than those I finally heard on the Bridge; it was five or ten minutes
after I heard the other horns before I heard those on the 305
Bridge; heard one on the starboard hand about a beam, and I think two on the port hand about a beam; they seemed to be half or three quarters of a mile off; I heard a horn which afterwards turned out to be on the Bridge; first heard one blast of the Bridge's horn; it appeared to be directly ahead; it was between two and three minutes after I first heard the Bridge's horn before the collision; I was then standing in front of the pilot-house; I think the look-out and I both heard it at
306

the same time; he asked me if I heard it, and I told him yes; he said, did you hear that horn? I said yes, and started for the pilot-house; I went on top of the pilot-house and stopped both engines; gave an order to the man at the wheel to port; that order was given just as I started to go on top of the pilot-house; I gave the order to port immediately upon hearing the horn; I went to the top of the pilot house as quick as I could get there; the engine bells on the Colorado are worked from
307 the top of the pilot-house; the next thing I heard was two blasts of the Bridge's horn.

Q. Where did the two blasts appear to be?

A. Nearly dead ahead, as nigh as I could tell.

Q. What did you do on hearing these two blasts?

A. Ordered the wheel hard a starboard; ordered the look-out to the wheel to help to put it over and then backed the port engine; that is I rang to back.

Q. Had the engines been stopped under your order to
308 stop before you rang to back?

A. Yes.

Q. Where was the look-out when you ordered him to go into the wheelhouse?

A. He was at his station on the promenade deck.

Q. What would be the effect on the bows of your vessel backing on the port engine?

A. Slew her bows to port.

Q. About how far should you think did the wheelsman have time to get the wheel on the port side before you gave
309 the order to starboard?

A. Probably a turn, I do not think more.

Q. About how long, then, was it between the two orders, port and starboard?

A. It might have been half a minute.

Q. Did the look-out go into the pilot house?

A. Yes.

Q. What, if anything, did you see them do with the wheel?

A. I saw them put it to starboard.

310 *Q.* Was the port engine backed?

A. Yes, sir.

Q. What was the next thing which occurred after you gave the order to starboard the wheel?

A. I heard the horn again.

Q. How many blasts?

A. Two.

Q. Where?

A. It sounded nearly ahead still.

311

Q. What was the next thing done?

A. I rang to back the starboard engine.

Q. Was it backed?

A. Yes, I suppose it was.

Q. Where were you standing when you were giving those orders?

A. On the pilot house.

Q. Did both engines back after you gave the order to back the starboard engine?

A. Yes.

312

Q. How long did they continue backing?

A. The port engine backed nearly a minute before I rang to back the other; they backed together about half a minute.

Q. Did they back down to the time of the collision?

A. Yes.

Q. When did you first see anything of the Bridge?

A. She was right under our bows before I saw her.

Q. Was that before or after you rang to the starboard engine?

A. After.

313

Q. Had you seen anything of her signal lights before you saw her?

A. No, sir; I should call her signal lights, her—and in speaking of seeing her I meant her signal lights.

Q. Why did you not see anything of her before?

A. It was too thick a fog.

Q. What signal lights did you see on her when you saw any?

A. Green.

314

Q. Did you hear anything on board the Bridge before the collision, and if so, what?

A. Yes, sir; I heard them sing out, "put your wheel a starboard and back her."

Q. Did you judge this to be sung out to you?

A. Yes.

Q. Did you hear them sing out anything else?

A. No, sir; no, sir; there was a general noise, could
315 hardly distinguish; but I heard that distinctly.

Q. Did you hear anything which you judged they were singing out to themselves—any order on their own vessel?

A. Heard some sing out, "Hard up that wheel," which, I judged, was for their own vessel; I heard this three or four times.

Q. The two vessels came in collision, did they?

A. Yes.

Q. What do you judge your speed was at the moment of the collision?

316 *A.* Our way was nearly stopped; it might have been a mile an hour, and it might have been a half a mile an hour; it could not have been much.

Q. Would it exceed a mile an hour?

A. No, sir; I don't think it would.

Q. Where did you strike her?

A. Just forward of her main rigging, on her starboard side.

Q. What was your course down to the time you gave the order to port the wheel?

317 *A.* North, northwest.

Q. What did you do with the whistle from the time you commenced sounding it down to the time you started to go to the top of the pilot-house?

A. I blew it regularly.

Q. How often?

A. From one to two minutes; I sounded it once every one or two minutes.

Q. How far did they get the wheel over under the order
318 to starboard?

A. They got it hard over.

Q. How much should you judge the vessel swung under the order to starboard?

A. She might have swung a point; she could not have swung far with the way she had.

Q. About how long were both engines backing before the collision?

A. About half a minute.

Q. About at what angle did the vessels strike between the 319
two bows?

A. About 45 degrees.

Q. What does the sounding of one blast on a sail vessel in a fog mean?

A. It means she is on the port tack, close hauled.

Q. And what does two blasts mean?

A. That she is on the starboard tack, close hauled by the wind.

When the vessels came together, I rang to stop both engines; they were stopped; the fog had continued very thick 320
from the time that it shut in down to the time of the collision; our vessel stood a good deal higher out of the water than the Bridge; the promenade deck of the propeller was about fifteen feet higher than the deck of the Bridge; the men of the Bridge got aboard of us as soon as they could; immediately after collision; they came in on the anchor stocks on the bow; the captain and two mates came in a boat; our stem is nearly straight; the stem lay right up against the Bridge's side when they came together; it did not seem to cut into her much; I don't think more than eighteen inches; I could not see that we had 321
cut into her at all; I did not see any sign of any break in her; before the men came aboard, a line was passed to her, and before I left the pilot-house; it was the five-inch line we use to work on the promenade deck; they did not make it fast to her; I don't know why; there was one man aboard long enough to have made it fast; his name was Dan, but I do not remember the other name; he was before the mast; we were not asked to render any assistance to my knowledge to the Bridge; I told Captain Steadman I did not think she was hurt as much as he 322

supposed; and he said he'd like to stay by her, and then he went up on the hurricane deck, the men on the Bridge made no effort to save her that I could see; after our captain relieved me in the pilot-house, he told me to go down forward and see if she was leaking any; I went down in the fore peak and found her leaking considerably; I speak now of my own vessel; I could see the water running over the ceiling and could hear it plainly, and supposed it was leaking more below the
323 ceiling; had others with me making this examination; I was probably down there a quarter of an hour before I came up at all; I was down half a dozen times in the course of an hour; when I first saw the leak I judged we were in danger; I could not tell where, or to what extent it was.

The vessels lay in nearly the same position for some time; the vessel's top-sail backed and held us together; we lay together an hour and five minutes; I know by the time the wheel was relieved, and asking the wheelsman what time it was; there was a clock right behind him in the pilot-house; I
324 judge it was an hour, at least; the Bridge did not appear to have sunk any in that time; the Bridge's top-sail filled, and she drifted away from us; she did not appear to be sunk any then; I did not see any oats floating on the water; I saw the scum from the siphons; they are made for blowing the bilge water from the vessels; it is a steam pump; there are two siphons on a vessel; they were worked while we were lying there; I reported to the engineer that she was leaking forward and he started the pumps (siphons) immediately afterwards.

When I heard the two blasts of the horn on the Bridge, I
325 asked the look-out if he heard two, and he said yes; he was then standing on the promenade deck, forward; our signal lights were in good order; they were good lights; the white light was at the mast-head; the red light on the port side; the green light on the starboard; the colored lights were on the arches, properly screened and burning bright; we had two engines and two wheels; I had papers as pilot of the first-class; I never knew a man on the Colorado to be asleep at the wheel; I never told any one I did not understand the horns on
326 the lake; when the vessels lay together our engines were not

backed, to my knowledge; we were bound from Buffalo to Chicago, with not more than a third of a cargo.

CROSS-EXAMINED.

I don't remember what time of day we left Buffalo on that trip; it is a good while ago, and I have no particular object in remembering; when Mr. Hibbard asked me about this 327
affair in his office, he did not ask me when we left Buffalo; we left Detroit about 4 o'clock in the morning; we passed Port Huron light at 12:10 noon; when I took the watch that night we were a little this side of Point au Barque, say fifteen or twenty miles; the collision was about forty miles from Thunder Bay light, and about thirty-five miles from Point au Barque light; the last light I saw before the fog shut in was Point au Barque; lost sight of it about 9 o'clock; we ran it out of sight, and were then fifteen or twenty miles from it; that night we ought to have seen the light fifteen miles; it is seven- 328
ty-five miles from Port Huron light to Point au Barque light.

When the fog set in, and after calling the captain, I went in front of the pilot-house, on the hurricane deck; I could not ring the engine bells from that point; the nearest point I can go to ring the engine bells is the top of the pilot-house; the top of the pilot-house is nine or ten feet above where I was standing; I don't know that it is quite so much as that; it is considerably over my head; the steps to the pilot-house are abaft of it and along side of it; they lead down on both sides; after calling the captain, I went back and told the engineer, and 329
back to my station, in front of the pilot-house, on the hurricane deck, and commenced blowing the whistle; I went to the skylight, over the engine room, to tell the engineer; the skylight is nigher aft than forward; it is just abaft the smoke stack on the promenade deck; I walked from the pilot-house to the skylight and then back, or came back as quick as I could; while I was gone there was no one on watch except the look-out; I was obliged to leave as I did; there was no one else there but the look-out; there was means of signaling the engineer to 330

go slow; the bells were there; I did not use them because it is customary to tell the engineer, so he will know how to regulate his fires.

The engineer answered me when I first called down the skylight; he was standing between the engines; after I came back from the skylight, I went in front of the pilot-house, on the hurricane deck; I did not leave the hurricane deck till I went on the pilot-house; hearing the Bridge's horns ahead
331 made me leave there and go on top of the pilot-house.

Q. The look-out swears you were on the promenade deck, right by him, when he first heard the horn; which is right, you or he?

A. I am right, and he must be wrong; I swear I was not down on the promenade deck when the horns of the other two vessels were heard.

I was first mate of a propeller six years before this collision; and I had been first mate three full seasons; I am first
332 mate on the Colorado now; I expect to remain there all the season; her tonnage is 1.470 tons; that is very large, one of the largest on the lakes; her usual speed is not more than nine or ten miles an hour; she would scarcely average nine this season; when the fog shut in I gave no particular order to the wheelsman, but I told Jim, the look-out, to keep his ears open.

Q. Is it not often the case in a fog, when the officer of the deck hears horns, showing that there are several vessels in his vicinity, to go himself, or send some one aloft to look out for them?

333 *A.* It is, when the officer of the deck thinks you can see better from the mast head than from below. Very often you can see better from the promenade deck than from the mast-head. It is often the case they do send some one aloft in a fog; we could not see hardly anything from the promenade deck that night.

Q. If you could have seen the Bridge from 400 to 600 feet away, running at the slow rate of speed you say you were, and she kept her course closed hauled, on the starboard tack,
334 don't you think you could have avoided her?

A. Could have avoided her if she had been directly ahead.

Q. You say you think you might have entered her side about eighteen inches. You form that opinion, to some extent, from the low rate of speed you think you were going, don't you?

A. No.

Q. If, when you struck the Bridge, you had been going from four to six miles an hour, would you not probably have 335
gone into her from six to ten feet?

A. Yes, sir, I think we would.

I called the captain when the fog shut in, because I was so ordered, and it is customary, and I would do it without orders. The vessel on the starboard hand was blowing four blasts; those on the port I could not distinguish; they were apparently blowing both together, so it would be impossible to pick them out; they were blowing very often, and I did not consider we were in any danger from them, as they were abaft the beam; three blasts means that the wind is abaft the beam on the port 336
side, and four blasts means abaft the beam on the starboard side; some blow three when they are dead before the wind, and some four; some blow one single blast in a fog, no matter how they are sailing; they don't always pay regard to rule; I saw a recommendation from the board of underwriters, and some follow it, but it is not invariable; I never knew there was any law established by Congress as to fog signals for sail vessels.

There is a rule established by Congress for fog-signals for 337
steam vessels.

There is none for sail vessels, by law, that I know of.

When I gave my wheelsman the first order to port, I was standing in front of the pilot-house; I gave it just as I started for the top of the pilot-house; he must have got the wheel half a turn over before I got to the top of the pilot-house; I went hastily—probably didn't take more than five seconds; when I got there, I rang the bell to stop both engines; the engineer stops one and then turns and stops the other; he stops them by shutting the throttle, I suppose; I don't know but the 338

motion of the boat will turn the wheel a turn or two after the engine is stopped.

I think the wheelsman had got the wheel about half a turn to port when I got on top the pilot-house; and I think he had got it about on turn to port before I gave him the order to starboard; I could not tell how long it took me to go from my station to the top of the pilot house; I don't think it would take five seconds; the
339 ladder has ordinary stair steps; the wheel was about half a turn to port when I got to the top of the pilot-house, and that was from three to five seconds after I gave the order to port; and then, in three to five seconds longer, he would have had it over one full turn to port, and at that point I gave him the order to hard a starboard; I rang the bell to back the port engine; probably, at the same time, I gave the order to hard a starboard; I had the bell pull in my hands; to stop both engines I have to pull two separate wires, one for each engine; the starboard bell-pull sounds a whistle for the starboard
340 engine, and the port bell a gong for the port engine; bell is a common term used for an engine signal, although it is not, in fact, a bell; I stopped the starboard engine last when I stopped the engines; three turns of the wheel puts it hard over either way; two men will put the wheel over quicker than one; shortly after the men got the wheel hard a starboard the collision occurred; I think the wheel must have been over half a minute before collision.

Q. The look-out, who helped put the wheel over, swears as follows: "We had just got it hard a starboard, when the
341 collision took plaoe." Is that correct, or not?

A. If he means that he just got it there and no more, he is not correct, for I think the wheel was hard over half a minute before. I could see and was watching it.

Q. Would not the man who put the wheel over be more likely to be correct about that, for the reason that you had other things to look at, while he had not?

A. I don't think he would. I could see the wheel perfectly plain, and I watched it, and know how long they had it
342 over.

Q. Did you not ring to go ahead on the starboard engine about the time you backed the port engine?

A. No, sir.

Q. Could you not see the Bridge when you ordered the port engine backed?

A. No, sir.

Q. How far off from you was she when you did see anything of her?

A. She was nearly under our bows; I don't think she 343
was fifty feet off, and to port of us a very little—almost lapped on to us.

Q. Was it after you saw the Bridge that you heard the order on her to hard up the wheel three or four times?

A. Yes, sir.

Q. Measuring by the points of the compass, about how many points of compass were there between the keels of the vessels as they struck?

A. About four.

We have two compasses in the binnacle; we have no others 344
that we used.

All I know about the line being passed was what the second mate told me, and seeing the line then over the port bow just hanging down over the stem over on the deck of the Bridge. There was a turn of it over our stay; the men came up on this line; they sung out for a line and came up on this line; some one said to make the line fast; we should not have made the line fast over the stay if we had wanted to hold the vessels together; our vessel was drawing about seven feet forward, and our stem curves in; slopes aft when it gets as low 345
down as that; probably it commences to slope six or seven feet from the keel.

Q. Measuring at the water line that night, how wide would your boat be in your judgment measuring back 12 feet from the stem?

A. I think it would be about ten feet, and above that more.

The captain's room is the first starboard door on the promenade deck; it brings it aft the pilot-house; I had no other 346

collision last summer; I did not run my bows into anything unless it was in Chicago river or Buffalo river; I may have pushed into something, but not to do any damage; I was down in the fore peak about fifteen minutes at first; I came on deck and reported to the captain; I told the engineer some fifteen minutes after the collision that she was making water forward, and he started the syphons of his own accord.

347 RE-DIRECT.

Three turns put the wheel hard over either way; that is taking the wheel amidships; there was nothing in sight when the fog commenced that night; the line which was passed over was a full coil, nearly a hundred fathoms; don't know as there was so much—sixty at least; I heard some one on our deck call to make the line fast; I don't know who it was; I suppose it meant to make it fast to the Bridge; they must have been most all on the bridge then; there was a turn—sort of half
348 hitch—to our stay; if it had been made fast to the Bridge it could have easily been made fast to a timber head on our boat as there was one within six feet; I heard a bell on the Bridge; that was almost at the time of the collision; she was under our bows fairly.

Q. You said you understood there was no fog signal for sailing vessels by law; did you mean by that that there was no fog signal for a vessel by-law at all, or that there was no separate signal indicating what tack a vessel was on.

(Objected as leading and withdrawn.)

349 *Q.* Explain what you meant when you said you did not know there was any fog signals for vessels prescribed by law?

A. Why I meant that I did not understand that there was any stated number of blasts by law to indicate what tack a vessel was on.

Our colored signal lights were 15 or 18 feet higher from the water than the Bridge's; men are sometimes sent to a mast-head in a fog to see if they can see anything; they can sometimes see better there than on deck; they could not see any-
350 thing any better there unless it was above the fog.

Q. Why did you not send a man to the masthead at this time?

A. Because the fog was thick around our masthead light, and appeared to be higher; it was the middle of the night, and he could not see anything but a light it he had gone up.

Q. Would a sail vessel's signal light that night be above the fog?

A. No.

Q. Could a signal light on a vessel have been any better 351
seen from a masthead than from the promenade and hurricane deck?

A. No.

I have been on the Colorado ever since the collision.

RE-CROSS.

Q. Why do you swear that a vessel's light could not be seen better from the masthead than below, when you were not 352
there, and cannot possibly know anything about it?

A. Well, sir, I could see the fog all about our masthead light and colored lights, and going to the masthead could not possibly make any difference.

Q. And don't you so swear because you know it is a precaution seamen very often take, and you must give some excuse for not doing what was your duty?

A. No, sir.

(Signed) J. B. HALL.

Subscribed and sworn to before me, the 21st day of Sep- 353
tember, 1869.

(Signed) GEO. GORHAM,
U. S. Commissioner.

Adam Haig,

Being duly sworn for the claimants, testified as follows:

I reside in Buffalo; I am 46 years of age; I am an engineer, and have been for 22 years on the lakes; I was first 354

engineer on the Colorado at the time of the collision with the Bridge; I had papers as first engineer; I had been on her all of the season of 1868, and this season up to the collision; I was on watch as engineer, and had charge of the engine at the time of the collision; I went as watch after supper, a little after six o'clock, and my watch lasted till one in the morning; the collision happened about five minutes before twelve; I don't know the day; I paid particular attention to the time; I
355 looked at the clock in the engine-room; the collision happened in a fog; the fog commenced about eleven o'clock; it was pretty thick, I should think; I don't pay much attention to the fogs; that is not part of my business; the speed of our vessel before the fog commenced had been about nine and a half miles an hour; that is her usual speed when on her regular trips; soon after the fog commenced I got an order from the mate to check down; it was about ten minutes after the fog commenced that I got the order to check down; I did check down; she went, I should think, about three miles an hour
356 after she was checked; she did not exceed four; the engineer is the best judge of the speed of the vessel; he knows what turns or revolutions his engine is making; I checked her down to about the same speed as I use when running around in a harbor; after I checked her down, the first order I got was signals to stop both engines; one is a gong and one a whistle; we call them bells; just as I got the order to stop, my speed was abont three miles an hour; the same as it had been since I got the order to check down; I obeyed the order to stop
357 both engines right off; I was standing between the two engines; it was about two minutes after I got the order to stop both engines before the collision; it might not exceed two minutes; it may have been a minute and a half; the next order I got was to back the port engine; this order was only a few seconds after the order to stop both; when I got the order to back the port engine I backed it; the next order was to back the starboard engine; I did it; the order to back the starboard engine was about half a minute after I got the order to back the port engine; both engines backed; one backed about a minute, and
358 the starboard about half a minute before the collision.

In giving these times I only give my estimates; it may have been longer or shorter; the engines continued to back down to the time of the collision; I got the orders by the signals; when we struck, the engines were backing; when the boats struck I was standing between the two engines on the main deck; that is the place where I work the engines; at the moment we struck our speed would not exceed a mile an hour, if it was that; I should think the headway was almost entirely stopped; I felt the jar and that was all—just merely felt it; I 359
could not tell whether we ran into her any, I did not go and look; judging from the speed of our boat I don't think we could run into her a great ways, if we did at all; the boats lay together an hour and ten minutes by the clock; I looked to see; I used the forward syphon which is about half way between midships and the stem, on the starboard side; I used the other one on the port side some, but not so much; that is aft under the boiler about 62 feet from the stern; I heard no horns; that's not part of my business; I did not see the vessels as they struck; I was at my engine; after they struck I stop- 360
ped the starboard engine first and then the port; this was a few seconds after they came together; the Bridge drifted away from our starboard side after the hour and ten minutes; she did not appear to be sunk any when she drifted away; I did not back the engines before she drifted away; she drifted away before I started the engines; I stood in the gangway looking at her and saw her as she was drifting past.

Q. Did you ever tell a Mr. Nolan or anybody else "that at the time of the collision the vessel was under a slow check; that she was working only one engine," or anything of that kind, 361
or that "at the time of the collision I was working only one engine?"

A. No, sir.

Q. Did you ever say to Nolan, or did any such conversation as this pass between you and Nolan or any one else the next morning after the collision, or any other time in which any one said the mate did proper in backing with one wheel and going ahead with the other, or in which you allowed that the Colorado was working only one engine, or in which you 362

said you were backing on one engine and went ahead on the other?

A. No, sir; there was no such talk, or any of it with anybody; that was not the fact.

CROSS-EXAMINED.

I don't know anything about the fog; I don't pretend to;
363 about 11 o'clock the fog shut in; I observed it from the gangway; we were going about nine and a half miles an hour; I know from the number of turns we were making; the mate gave me the order to check her down very low, that it was getting thick foggy; he gave me this order down through the skylight; I think he said the captain said for to check her down very low; I checked her right down at once; it would take the Colorado about ten minutes to get her speed down to three miles an hour as the sea was that night; the engine makes 20 to 25 revolutions to run three miles an hour, to run
364 nine and a half miles she makes 70 revolutions; I counted about half-past eleven by my clock, and she was making 25, and then I shut her down more to make 20; this was about twenty minutes after the order to check down; running at nine and a half miles and shutting off all the steam, I think her headway would carry her two miles with sea and wind, as it was that night; the signal to stop both engines was five minutes before 12; I shut the steam clear off immediately; then I was running about three miles an hour; then in three or four seconds I got the order to back the port engine; I
365 backed the port engine about half a minute; then came the order to back the starboard engine; they made about 80 revolutions in backing; we backed full open hard as I could; all this time I had a full head of steam; only kept the damper shut; I had not left the engine-room at all; it was fifteen or twenty minutes after we struck when I went to the gangway and saw the Bridge; it was when the captain came aboard; I could see her lying at our bows, but it was that thick I could not see very well; she was lying close to our bows; I did not pay
366 much attention; at about one o'clock I went out and looked at

her again; she was then abreast our after gangway; her side was abreast of ours and about sixty or seventy feet away; I did not look at her over a few seconds each time; we started up about five minutes past one; our speed could not have been to exceed a mile an hour when I got the order to back the starboard engine, and that was about half a minute before the collision; we can run the Colorado more than nine and a half miles, but my orders have been all the season to run her at nine to nine and a half to save fuel; I had no conversation with any of 367
the crew of the Bridge that morning in reference to the collision.

(Signed) ADAM HAIG.

Depositions taken in Buffalo, July 23d, A. D. 1869, before George Gorham, U. S. Commissioner, in the case of the National Insurance Company *vs.* Propeller Colorado, and used by stipulation in this case.

James N. Armstrong: 368

I live in Boston, Massachusetts; I am a sailor by occupation; I have been a sailor for 23 years; my experience has mostly been upon the ocean in the China and European trade; I have acted in all capacities from before the mast to mate; I have been going as officer, that is, first, second or third mate, for ten years; I was on the propeller Colorado when she had a collision with the H. P. Bridge; I think it was on the 11th of May, 1869; I had then been on the Colorado since May 1st; I had shipped at Chicago and came down with her, and this collision was on her return; I had acted as 369
mate mostly on ships—full-rigged ships; I had been on the lakes only since May 1st; I came from the seaboard here; I shipped at Chicago as night look-out; I served as such while upon her; I went on watch about half-past six or seven in the evening, and remained on watch all night—that was my whole duty; the night of this collision, I went on watch at half-past six; it was foggy at the time of this collision; the fog shut in about half-past eleven; the chief mate was on watch when the fog shut in; I was on lookout, and Benjamin 370

Walsh was at the wheel; the wind was about south when the fog shut in; there was about a five or six knot breeze; our lights were burning brightly, and were properly placed; I was forward on the promenade deck—as far forward as I could get; the mate was with me till the fog shut in, and then he went on the hurricane deck, forward of the wheel-house; our vessel, before the fog shut in, was going about nine knots an hour; when the fog shut in we checked our vessel down; she
371 was checked down directly after the fog shut in; from the time we checked till we heard the Bridge's horn, our speed was four or five knots, I speak only from my general judgment; it was a very dense fog; you could not see more than half a ship's length ahead; I remained forward, as I have stated, till I was called away to assist the man at the wheel; the collision was about 12 o'clock; I did nothing forward but look-out; I did not leave my position; I kept as good a look-out as it was possible to do; I heard horns broad off the port bow, and one or two off the starboard bow, about one point
372 forward of the beam; about the same on each side; this was probably five or ten minutes before I heard the horn from the Bridge; I heard the horn which was on the Bridge; I was standing forward on the look-out when I heard the first blast on the Bridge; I should judge that was not more than two minutes before the collision; I heard only one single blast; it seemed to be right ahead; the mate and I were standing down forward together when I heard the first fog-horn, not on the Bridge; when I heard the first blast of the Bridge's horn he was on the hurricane deck, forward of the pilot house;
373 when I heard the first blast on the Bridge's horn, I asked the mate if he heard it, and he allowed he heard it, and said it sounded the same to him it did to me, right ahead.

Almost immediately afterwards there were two blasts right ahead, and I judge from the same vessel; I did not hear the mate give any order between the first blast and the next two; the mate asked me if I heard the second blasts; I told him I did; he asked me if I understood there were two blasts, and I told him I did; next I was called into the wheelhouse by the mate
374 to assist the man at the wheel; I can't recollect what words he

used, but the expression was for me to get into the wheelhouse as quickly as possible; I heard him give the man at the wheel an order to hard a starboard; that is the only order I heard the mate give the wheelsman; I heard the mate ring the bells; I did not understand the signals; I could not hear them in the engine-room from where I stood; when I got into the wheelhouse the man at the wheel was rolling it over to starboard; when I got into the wheelhouse I went to the port side of the wheel and helped the man to put it to starboard; the 375
wheel was hard a starboard when the collision occurred; we had just got it hard a starboard when the collision took place;

I did not notice how far she had swung before she collided; was not paying any attention to that at all; the propeller struck the Bridge on the starboard side; it was not raining any that night; the sea was smooth; the vessels lay close together after the collision; our stem was laying right up and down her side; the stem did not appear to have cut into her any; I did not see any sign of break about the Bridge; in fact it was dark, I could not see; her men got off her by climbing 376
up their main rigging and springing on to our anchor stock; the anchor stock was over out port bow; we lay together an hour before we separated; I saw these men when they came aboard us; I was then forward in my place; I had then left the wheelhouse; I went away forward directly after the collision; when I went forward, I was looking to see what damage was done the Bridge; it was so dark I could not tell whether we had cut into the vessel's side or not; I could not tell then whether our stem was in the side; our stem did not appear to be into her, but I could not tell, for I could not see her deck; 377
I did not hear the breaking of anything; all I heard was the collision; there was no light passed over the bows; we separated after being togther about an hour; after we had parted ten minutes, she disappeared; she did not appear to have gone down any then; there was a hawser passed over our starboard bow to the vessel; it was directly after the collision, and the men were then coming over our bow; the men came aboard right off; some men came in a boat; I don't know whether our line was made fast on her or not; if it was it was cast 378

adrift again; in fact I don't think it could have been made fast, for the men did not stop aboard long enough; before I heard the first horn on the Bridge, I had not seen any of her lights; it was too thick for that; did not see her lights till about a minute or two before the collision, and I was then in the wheelhouse; saw both lights then right under our bow; we sat a good deal higher up out of the water than she did; before we heard the Bridge's horn our course had been north, northwest;
379 I only give that as I heard it; I did not look at the compass; after the fog shut in we were blowing our whistle every one or two minutes; the whistle is on the after part of the vessel, with a string leading to the wheelhouse; I have had to stand watch, and I know the compass.

CROSS-EXAMINED.

I live in Boston; I have almost always lived there; I never
380 sailed on the lakes till this 1st of May; I never was on a steam vessel as an officer, except I was quartermaster on a government vessel, and also on the San Francisco and Panama line; I took a notion to come out here in the western country; I judge of the speed of the vessel by looking over the side only; the fog was very dense; it may have been ten minutes after the fog set in before I heard any fog-horn at all; the first horns we heard was two blasts broad off the port bow; almost immediately after I heard two blasts more on the starboard; the propeller answered both of these; the propeller had been blowing her
381 whistle some time before we heard any blast at all; it was probable a couple of minutes after this that I heard one blast from right ahead; it must have been the Bridge, because she struck us so shortly afterwards.

Almost immediately after it was we heard the two blasts, or a minute or two, probably; during all this time I was on the look-out; it was a very short time before the collision, that I left the deck and went into the wheelhouse; I was in the wheelhouse at the time of the collision; I left the wheel-
382 house almost immediately after the collision; when I got

down on the deck the vessels were close together, our stem close to her side about an angle of forty-five degrees; the vessels were right close up together, touching each other; I think they lay alongside all of an hour, within a few feet of each other; it was blowing a five or six knot breeze, but the water was smooth; I saw the master of the Bridge when he came aboard; I did not hear any conversation between him and the officers of the propeller; the men came aboard by climbing up the main rigging and coming on to our port 383
anchor stock, except four or five, who came in a boat, and I don't know where they came aboard.

There was nothing done towards saving the Bridge except passing over the hauser; this was done before her crew left her; they did not ask any assistance; they made it a point to get aboard of us as quick as possible; I could distinguish the upper part of her after the collision, but not the deck; and I could not tell whether she was injured or not; I could see the water; did not see any oats floating; the Bridge did not appear to be sinking at all up to the time we left her. I 384
believe I did not hear any orders aboard the propeller with reference to saving the vessel; I could have heard all ordinary orders; the Colorado is nothing extraordinary, so far as I I know, in the way of speed; her usual speed was about nine knots; she ran, I judge, at the rate of about four or five knots after she had been checked down; I had no conversation with the captain of the Bridge about the collision; I was the only look-out up to the time of the collision; I did not say to Capt. Steadman that this was my first trip; I told one of the men that this was my first trip on the lakes, and I did not under- 385
stand the signals of the horn; I did not tell Captain Steadman that the mate did not give me any instructions, and I did not believe he knew about them himself; I have said very little about this matter to any one; I am still engaged on the propeller; I am not doing much of anything on her now; I have not talked with Captain Brett as to what I was going to swear to; I am in the employ of the owners of the boat, and shall be till I get back to Chicago; I am not on board in any particular capacity; I heard no bell on board the barque, or hailing 386

before the collision; heard them shouting after she struck; it could not have been more than one or two minutes before they struck when I saw her lights; she could not have been a great distance off; I had hardly got a glance at the light when they collided; I was look-out on the trip down.

RE-DIRECT.

387 I saw a Mr. Nolan on our boat after the collision; I never said to Nolan or any one that the mate had not instructed me as to the fog-horns, and that the mate did not know himself; I never said this to Erskine; in giving statements of time I have only given estimates; they might have been longer or shorter; when the mate told me to help the man at the wheel, I obeyed as quickly as possible; the horns I heard on the port and starboard side were not on the Bridge.

RE-CROSS.

388 From my position as look-out to the wheelhouse is probably twenty-five feet; I got right up without going around; there was no conversation whatever between Captain Steadman and myself; I had but little conversation with the men, any of them; only occasionally with some of the men on the trip up to Milwaukee; I am not going to remain on the lakes; I shall go further West or back East; at the time the collision occurred, our vessel could not have been going more than one or two knots; she had almost lost her headway; she was moving ahead some; my mind was on something else, and I can't tell
389 how fast she was going; the mate, self and wheelsman were the only ones on deck.

JAMES N. ARMSTRONG.

TESTIMONY TAKEN IN OPEN COURT ON TRIAL, APRIL 26, 1871.

Julius W. Brett, sworn on behalf of claimants:

I reside at Cleveland; I am a sailor; I came on lakes, spring of 1838; am fifty-five years old; commenced sailing in
390 1830; was master of vessel in 1834; I first went as master of

propeller in 1855; have been master of propellers ever since, in Chicago and Buffalo trade; I have an interest in Colorado; we had about 400 tons general merchandise; mate's name was John Hall; had been with me in 1868 and 1869 as first mate on Colorado; he was a very good man; always done his duty; appeared to understand it; He knew horn signals on the lakes; look-out I had shipped in Chicago; he was a sailor-man; Walsh had been with me only the one trip; he was a pretty good sailor-man; could steer a good trick; last saw him 391
in Milwaukee; when we got there on same trip of the collision, he wanted to go off the lake; I tried to get him to stay; he would not; I took him and had his deposition taken before any suit was commenced; he told me when he was in Chicago he would be at the Stuyvesant House; have not seen him since that time; have made inquiry to find him in Chicago; have not been able to find him; I wanted him as a witness here; commenced inquiry last Tuesday, I think; I could learn nothing of him; on night of collision, when fog came on, I was in my room lying on lounge; door of my room is about fifteen 392
feet abaft pilothouse; Hall called me; I told him to go back to engineer, and tell him to run her slowly, and keep his whistle going; I stood at my room door; I know speed of boat was checked; as soon as he passed by forward, I lay down again on the lounge; I could see it was foggy; had my clothes on; had my boots off; while I lay there I heard nothing—no hails or horns; I went to sleep; I felt a jar; put my boots on, and came out; did it as quick as I could; stepped forward, and saw a vessel forward, and some of the men coming over our bows; they were climbing over our port bow, on the anchor 393
stock; there were four or five, I think; port anchor stock is along the stem; could not see whether vessel had cut in; I went on top of pilot-house; mate told me the engines were stopped; they were not working at that time; I told the mate to examine the condition of our vessel—to take a light and go down and see if she was making any water; he went; he was gone fifteen minutes, I should judge; when he came back he said she was making considerable water; I told him to tell the engineer to blow his syphon and try and keep her clear; 394

the effect of blowing syphon is to blow scum of bilge water out, which blots on surface of water; I could see about 150 or 200 feet from top of pilot-house; some one came up there; think it was captain's son; wanted I should stay by her until they could get their clothes; I told him I would; I told them to give them a line; the line was not made fast to the vessel; don't think they had time to make it fast; think they were all on board within two minutes, except captain
395 and two mates; they came on board in ten or fifteen minutes; I think we were in pretty bad condition; stem was all knocked off; it had been slivered up before; what was left was all gone; we were together touching about an hour; I could not see from top of pilot-house that we were into her any; then we swung around; her topsails filled and she went away from us; I then put my helm aport, and went ahead on port engine and tried to overtake her; did not succeed; finally went off, and left her; had to go slow for fear of running into her; when fog came on we were about twenty-five or twenty-eight miles from
396 Point au Barque; depth of water on our course is from thirty to forty fathoms; was present when measured about green paint; was green paint on other parts of vessel, in different places; got it on in rubbing past vessels in the creek; was green paint on starboard quarter, on bulwarks above; green paint is common on boats; our stem is what is called a straight stem; I did not see any oats float on the water; I had some conversation on subject of collision with captain of Colorado, just after I gave up searching for her; I was standing on starboard side of premenade deck forward; I went up to him and
397 asked if he was captain of vessel; he said he was; I afterwards knew him to be the captain; he said: "Fog and snow will beat the d—l;" he said: "I could see your brright light, but I am satisfied you could not see ours;" I did not see that either the officers or crew of vessel attempted to ascertain what damage was done to the vessel; we could see nothing but her green light; could see no light in her forecastle; I had talk with captain of vessel in Chicago about collision; Captain Steel was present; he went into my room with
398 Captain Steel; he said they had plenty of time to save their

clothes, and that they might have saved their vessel if they had stayed by; but they all deserted him; nothing else said at that time; my vessel, thirteen feet abaft stem, could not have been less than twelve feet across, on level of deck of barque.

CROSS-EXAMINATION.

Collision was about thirty-five miles from Thunder Bay 399
light; fog continued all night; I remained on deck; after collision steered N. N. W. part of time; took this course about two o'clock; wheelsman had signed shipping articles at Chicago; shipped on round trip; he did not know to what part of Canada he was going; when barque had topsails aback, she was heading about S. E. by S. or S. E.

Q. Can you explain to me how it was that the barque, with wind about S., she heading S. E. by S., close hauled on starboard tack, could get her topsails back?

A. Because her topsails would not stand full within three 400
points of the wind.

Q. Why, under the same conditions, did she not drift away from the propeller, either astern or sidewise?

A. Because her fore and aft canvass was partially full, and held her head, and the wind being almost after the propeller, kept her up to her.

Q. You started your syphon after mate had made his report?

A. In about fifteen or twenty minutes after the collision; there was no scum on water until after syphon was blown; did 401
not make Thunder Bay light at all; made land at south'ard of Hammond Bay, along next afternoon about four or five o'clock, about fifty-five miles beyond Thunder Bay; the fog held on until that time; did not keep her checked down all the time; part of the time fog cleared away; then let her go along; about daylight in the morning we began to see so we could go along without risk; have two men at wheel going into port; Captain John Lyman bought claims; some papers were got out; presume it was a libel; Captain John Lyman lives in 402

Chicago; he did not sail then; don't know that owners of my boat got Captain Lyman to buy claims; he told me he had bought them; Captain Lyman is not the agent, and was not at that time of the Colorado.

RE-EXAMINATION.

I went on Colorado as master in spring of 1867, and re-
403 mained so up to collision. I saw scum from syphon on both sides of the vessel; I could tell that the vessel had stopped because the tremor caused by the engine when in motion had ceased; the paper I called a deposition was a statement taken before a notary public.

Question by the Court:

Forward syphon discharges about the center or a little abaft the center on starboard side; the after syphon discharges on port side, about 160 or 170 feet from the stem of the vessel;
404 we were lying under steamer to wind, and the wind blew scum forward.

Charles Ensign sworn for claimants.

I reside in Buffalo; am one of claimants in this suit; have been in transportation business about twenty-three years; remember collision; on inquiry, after I heard of collision, I ascertained that wheelsman had left at Milwaukee; that he had had his affidavit taken before a notary public at Milwau-
405 kee; I ascertained that he had gone, it I recollect right, somewhere in Canada East, to what locality I don't remember; I made some effort to keep track of him, but lost him; I have lately made particular inquiries for him; was told that his evidence was important, and I telegraphed to Chicago to have inquiry made among boarding houses and masters of vessels; I also telegraphed to Emmons & Van Dyke, of Milwaukee, to send me a copy of his affidavit; I received reply that the affidavit was taken before a notary of the name of
406 Roby, and that they thought it had been given to Tibbits; my

telegraph was handed to Mr. Tibbits for him to look up affidavit and send it; these efforts have been made in good faith.

CROSS-EXAMINED.

The efforts I have made were made within the last week; owners of Colorado were Geo. W. Holt and myself; know Colorado was libeled in Chicago for loss of sailors' clothes; I suppose the bills were paid; I paid some money to Brewster, or rather 407
he used our money in his hands; don't know who was attorney for libels; I suppose payment of money ended the suit.

RE-EXAMINED.

We settled claims because Mr. Bates sent us a bill of some $400 where some testimony had been taken, and I think it either settle—

Q. Did you retain the attorneys for the sailors? 408

A. We bought up the claims, and I supposed the attorneys went with them.

OPINION OF JUDGE LONGYEAR, IN THE DISTRICT COURT, ON FINAL HEARING JULY 18, 1871.

The collision occurred between 11 and 12 o'clock at night on the eleventh day of May, 1869, on the westerly side of Lake Huron, opposite Saginaw Bay, and about midway between Point au Barques and Thunder Bay lights. 409

The barque was bound down on a voyage from Milwaukee to Detroit and Buffalo, with a cargo of upwards of 30,000 bushels of oats, and 65,000 bricks, and the propeller was bound up on a voyage from Buffalo to Chicago with about one-third of a cargo of general merchandise.

The wind was about south. For some time before the collision the barque had been sailing by the wind, on the starboard tack, close-hauled, her course being about southeast by east, which course she kept until just a moment before the 410

collision, and after it had become inevitable, when her wheel was put hard a starboard. The course of the propeller was about north-northwest, which course she kept until a very short time before the collision, when her wheel was ordered hard aport. Before that order had been fully obeyed, however, it was countermanded, and the wheel was ordered hard a starboard, which latter ordsr was fully obeyed, and the collision occurred almost immediately after.

411 The propeller struck the barque near the mainmast, on the starboard side, at an angle variously estimated by the witnesses from forty-five degrees from the barque's stem to a right angle. The truth is undoubtedly somewhere between the extremes of these estimates, and probably nearer to forty-five degrees than a right angle.

The weather was foggy; and at the time of the collision, and for about an hour before, the fog was so thick that it was difficult to distinguish a vessel's lights at any considerable dis-
412 tance. From the time the fog set in, and up to the collision, the barque had blown her fog-horn, and the propeller had blown her steam whistle, regularly, as required by law, and just as the propeller was seen, coming down upon the barque, by those in charge of the latter, the bell was also rung on the barque.

By a custom of the lakes, adopted and acted on by all sailing-vessels, and well understood by all experienced and competent mariners, one blast of the fog-horn signifies that the vessel from which it is sounded is on the port tack, close-
413 hauled; and two blasts, given in quick succession, signify that the vessel is on the starboard tack, close-hauled. There are other modifications of these signals, but a notice of them here is unnecessary for the purposes of this case. By these signals, and taking notice of the direction of the wind, the course and direction of approaching vessels can always be determined with reasonable certainty by the exercise of that care and diligence requisite in such situations. The barque being on the starboard tack; sounded her fog-horn in double blasts, pursu-
414 ant to this custom.

On account of the fog, the barque had taken in her light sails and her foresail, and at the time of the collision was proceeding at a slackened speed. The propeller's speed had also been slackened when the fog set in down to from three to five miles an hour, as variously estimated by the witnesses on the part of the propeller, and from five to six miles an hour, as estimated by the witnesses on the part of the bark.

The proof shows that the fog-horn of the barque could be heard against the wind at least half a mile. The propeller's 415
whistle was heard on board the barque several minutes, according to the testimony of the master of the barque, nearly an hour before the collision. The barque's horn was not heard, or, if heard, was not distinguished from other horns blowing in the vicinity during the same time, or, if heard and distinguished, was not reported to or noticed by the mate of the propeller, who was in charge of her navigation at the time, until a very short space of time—by the highest estimates not to exceed one minute and a half, but more probably not to exceed one minute—before the collision occurred. 416

When the barque's horn was first heard on board the propeller it sounded dead ahead, and but a very short distance off. It was understood on the propeller, when first heard, to be a single blast, indicating, as we have seen, a sailing vessel on the port tack, close-hauled. It was then that the order hard aport was given on the propeller, which order would have been the correct one if the horn had been correctly understood. Before this port order had been fully obeyed, however, and when the wheel had been put only about half of one turn over, the horn was again heard, when it was correctly understood to be 417
two blasts. It was then that the order to port was countermanded, and the order hard a starboard was given.

When the horn was first heard, the officer in charge of the deck of the propeller was standing in front of the pilot-house, and where he could not signal the engineer. As he gave the order to port after first hearing the horn, he started and ran up to the pilot house, where he could signal the engineer, and at once signalled that officer to stop the engines, which was done as soon as that order could be obeyed, so that the engines 418

were stopped between the times that the order to port and the order to starboard were given. Immediately upon giving the order to starboard, after hearing the two horns, the officer signalled to back the port engine, in order to aid in swinging the propeller right to port as rapidly as possible, but just at this moment seeing the green light of the barque under the bows of the propeller, or not to exceed fifty or seventy-five feet off, he signalled to back both engines, both of which orders were obeyed.

419 The time between the giving of the order to back with both engines and the collision is variously estimated by the witnesses, some putting it as long as one minute, and some putting it immediately. But taking all the circumstances into consideration, especially the close proximity of the barque when this order was given, not to exceed seventy-five feet off, and the headway the propeller evidently still had when the collision occurred, judging from the severity of the blow, it must have been almost immediately, or not longer than a few seconds at most.

420 The officers and crew of the barque got on board of the propeller at once, and the latter stood by the barque for about one hour, during which time she remained afloat. The barque then drifted away from the propeller and passed out of sight, either by sinking, or into the fog, it being uncertain by the testimony which, but more probably the latter.

As to the extent of the injury done to the barque, there is considerable conflict. Those on board the barque, who had the best means of knowing, estimate the distance the propeller

421 cut into the boat at from eight to ten feet, but in the alarm of the moment, and in the hurry to leave what they considered a sinking vessel, they would be quite liable to overestimate the same; neither is it probable that she would have remained afloat as long as she did with so extensive a breach in her side notwithstanding the buoyancy of a portion of her cargo. I think, however, that it is abundantly proven that the injury was considerable, and amply sufficient to cause the barque to sink, as she evidently did. At all events, the barque and her

422 entire cargo were lost, and that their loss is directly attribut-

able to the collision is not, and I think cannot be, seriously questioned.

The damages claimed by the libel are $33,625.

The libel charges the propeller with the following specific faults :

1. That she was not properly manned.
2. Officers and crew not at their proper places and attentive to duty.
3. She had not a proper lookout properly stationed. 423
4. Too great speed.
5. That she did not take timely and sufficient precautions to avoid the barque.

The answer of Charles Ensign and George W. Holt, claimants and owners, and Julius W. Brett, master of the propeller, after detailing the events preceding the collision substantially as above stated, so far as they relate to the propeller, sets up the following defences :

"The said respondents allege that the said collision hap- 424
pened without fault or negligence or want of care or want of skill on the part of the said propeller, or any of her officers or crew; and they allege that the same was caused (if any fault existed on the part of either vessel) from the fact that, as appears from the said libel, the fog signal of the propeller being heard on the said barque, and both vessels being in a fog, the said barque might have avoided and kept out of the way of the said propeller, which she did not do; or from the fact that the said barque had not proper lookout, or did not have a proper fog-signal, or did not properly use or sound the same; 425
or from the fact that the said barque was (as in fact she was), at and before the time of said collision, unseaworthy, overloaded, and unmanageable.

"The said respondents allege, however, that they are ignorant of and as to what was done on board the barque, but expressly charge, as aforesaid, that if any fault existed upon the part of either vessel, such fault was upon the part of the barque, her officers and crew."

The answer, also, after detailing the circumstances of the 426

propeller standing by the barque, and the latter remaining afloat so long as she did, and alleging offers of assistance on the part of the propeller, in conclusion, alleges further:

"That the said officers and crew of the said barque neglected and refused to return to said barque, and neglected and refused to take any steps or to save the said barque and her cargo from loss, and that by reason of such abandonment of the said barque by her officers and crew, and their aforesaid
427 refusal and neglect, and by reason of the said barque being, as aforesaid, unseaworthy, overloaded, and unmanageable, and by reason of fault hereinbefore charged, on the part of said barque, and not by reason of any fault, negligence or any other matter in said libel alleged upon the part of said propeller, her officers and crew, said barque and her cargo were lost, as the said respondents are informed and believe."

The position that was advanced and mainly contended for on the argument, however, was that the collision was the result of inevitable accident.

428

Mr. Newberry and Mr. Brown, (Newberry, Pond & Brown,) for libellant.

Mr. Moore, (Moore & Griffin,) and Mr. Hibbard, for respondents.

LONGYEAR, J.:

I shall consider first the fifth specification of fault against the propeller, viz., that of her failure to keep out of the way of the barque.

429 The solution of the question of fault here presented depends upon the construction of article 15 of the act of April 29th, 1864, (13 Stat., 60,) as applied to the facts of this case.

"ARTICLE 15. If two ships, one of which is a sailing ship and the other a steamship, are proceeding in such direction as to involve risk of collision, the steamship shall keep out of the way of the sailing ship."

Article 15 is general in its application. The duty it imposes attaches all the same, whether it be in the day time or
430 in the night, in clear weather or in a fog. Its requirements

are in no manner affected or modified by the provisions of article 16. Those provisions merely impose additional preliminary duties. Hence, the fact of a collision between a steamship and a sailing ship must be held prima facie evidence of fault on the part of the former, in a fog as well as in clear weather.

The steamship must, of course, be apprised of the existence of the conditions upon which her duty under article 15 attaches, and she must be so apprised as to be enabled to act 431
intelligently and effectually. Those conditions are—

1. The fact that there is another ship in the vicinity.
2. That such other ship is a sailing ship; and
3. The position and course of the latter.

In the day time this is accomplished by actual observation of the vessel. In the night time by means of the lights which every sailing vessel is required to exhibit. In a fog, whether by day or by night, by means of a fog-horn, if under way, or a bell if not under way, as required by article 10 of act of 1864, before cited. The difference is in the mode or means 432
merely, and not in the result. In the one case the mode or means is by signals addressed to the sense of sight, and in the other to the sense of hearing. The result in the eye of the law is precisely the same in both cases, and the legal obligations of a steamship to see and hear the signals when properly given, and to govern herself accordingly, attaches in the one case precisely the same as in the other.

Unless it appears, therefore, that the sailing vessel did not do her full duty in regard to signals, or in some other respect, and that such failure on her part contributed to the collision, 433
there is no occasion to inquire into the details of the conduct and manœuvers of the steam vessel leading to the collision. In such a case her fault consists in the fact that she did not keep out of the way of the sailing vessel.

The first inquiry, therefore, that naturally arises is as to the conduct of the barque.

There is no dispute but that the barque kept her course, as she is required to do by article 18 of the act of 1864, up to the time she put her helm hard a starboard. This was done in 434

the midst of the confusion and consternation incident to the sudden peril in which the barque was placed by the propeller, the latter then being almost upon her. Even if the starboard order was an error, it was therefore not a fault to which any responsibility can be attached.

That the barque's lights were properly set and brightly burning, that she was properly manned and equipped, that her officers and crew were properly placed and attentive to duty,
435 and that her fog-horn was properly sounded, are fully made out by the proofs, and are in fact undisputed.

It is said, however, that, the barque being apprised as she was of the approach of the propeller by hearing the signal blasts of her steam-whistle a considerable time before the collision, the barque ought to have got out of the way of the propeller, and ought also to have rung her fog-bell sooner than she did, in order the more effectually to have notified the propeller of her presence and position.

By article 18 the barque was required to keep her course.
436 By article 10 she was required to use her fog-bell only when not under way. Here she was under way. The claim, therefore, is that the barque should have departed from those rules, both as to course and as to signal, and consequently that the case comes under article 19, which provides as follows:

"In obeying and construing these rules, due regard must be had to all dangers of navigation, and due regard must be had to any special circumstances which may exist in any particular case, rendering a departure from the above rules necessary in order to avoid immediate danger."

437 The danger of navigation which was then present, the fog, was one that was expressly provided for by articles 10 and 16, and with reference to which, as well as article 18, the barque was acting. This she had a perfect right to do, unless some of those special circumstances mentioned in article 19 should have arisen and come to her notice, requiring a departure from the rules. The special circumstances in this case, to which the collision is directly attributable, are the failure of the propeller to hear, and when she did hear, at first to rightly
438 understand, the barque's signals; and her failure to stop her

headway in time to avoid a collision after she did correctly understand those signals. There is not, and can not be, any pretence thet the barque had any notice or intimation whatever that the leviathan which was in her vicinity was not provided with ears to hear her warning signals, or having ears, would fail to put them to their proper use, or would approach so near before taking any measures to avoid her, that when taken they would be ineffectual. Neither is there any room to claim that she could have known the propeller was coming 439
down upon her sooner than she did, and when she was made aware of it, it was clearly too late for any effective action on her part. She did what in the alarm incident to the suddenness of the peril thus brought upon her, and without her fault, was thought best, but to no avail. For her to have changed her course before this would have been in violation of article 18, and for her to have rung her bell sooner than she did would have been in violation of article 10, either of which would have constituted a fault, for which she might have been held responsible if a 440
collision had still occurred. It is true, after the danger had become imminent, and in fact the collision was inevitable, her wheel was put to starboard and her bell was rung; but, as we have already seen, these acts, even if erroneous, cannot be attributed as faults under the circumstances.

It is also claimed that the injury was but slight, and that the barque was unnecessarily abandoned by her officers and crew. The proofs clearly show that the injury was of a serious character and sufficient to sink the vessel, and that the 441
loss of the vessel and cargo were directly attributable to that cause. It is true she remained afloat for an hour at least, but she was a long distance from shore, and in very deep water, and her injury was of such a character as to afford reasonable apprehension, to say the least, that all efforts to save her would be unavailing, and could result only in peril to those who should undertake it. It would be unreasonable to require the crew of a vessel to remain upon her under such circumstances. 442

The barque, then, being in no manner of fault, the only defence that remains to be considered is that raised upon the argument, viz., that the collision was the result of inevitable accident;, and this, as we shall see, involves a consideration of the particular conduct and manœuvres on the part of the propeller, including the question of speed.

"Inevitable accident" is defined by Dr. Lushington to be
443 "that which the party charged with the offense could not possibly prevent by the exercise of ordinary care, caution, and maritime skill." (The Virgil, 2 W. Rob., 201.) Our own Supreme Court defines it to be "where a vessel is pursuing a lawful avocation in a lawful manner, using proper precautions against danger, and an accident occurs." "The highest degree of caution," say the court, "that can be used is not required. It is enough that it is reasonable under the circumstances." (The Grace Girdler, 7 Wall., 203; see, also, The Pennsylvania, 24 How., 307, 313; The Washington, 14 How.,
444 532, 536; The Morning Light, 2 Wall., 550, 554, 560.)

It becomes necessary, therefore, next to inquire whether reasonable care, caution, and maritime skill were exercised on board the propeller under the circumstances.

The propeller was a large vessel, being of upwards of 1,400 tons burthen. She was in waters frequented by other vessels and was, in fact, in the vicinity of other vessels at the time, as indicated by the fog-horns heard on board of her. She was so proceeding in a fog in which other vessels could be seen but a short distance; on which account emergencies were
445 likely to arise, as did actually arise in this case, in which a sudden change of course would become necessary to avoid accidents, which, as the proof shows, would require two men at the wheel to accomplish with reasonable celerity. She was so proceeding, too, with fog-horns sounding from vessels on nearly all sides of her, requiring close scrutiny to distinguish any one of them from the others.

With a full knowledge of all these facts on the part of those in charge of her navigation, we find the propeller pro
446 ceeding at a rate of speed which I think the proof clearly

shows to have been not much, if any, less than five miles an hour, and with a watch of only four persons, consisting of the mate in charge, one man at the wheel, one man on the lookout forward, and one engineer; a watch hardly sufficient on such a vessel on the clearest night—and we may add, the master, although notified of the peril, calmly reposing in his state-room. And then, when the crisis comes, and seconds assume the magnitude of minutes in estimating the time within which the headway of the propeller must be stopped in order to 447
avoid the catastrophe, we find the officer in charge of the deck out of reach of the means provided for signalling the engineer to stop and reverse. Let it be borne in mind that the care and caution used must be reasonable under the circumstances. The watch on the propeller may have been a reasonable one, it certainly could have been no less and be a reasonable one, and the position of the mate, in front instead of on top of the pilot house, may have been a reasonable position, on a clear night; but it certainly needs no argument to show that what is barely sufficient on a clear night would fall far short of 448
being such in a fog, with the attendant circumstances above stated. Upon a vessel of that size, reasonable care and caution, under the circumstances, required two men at the wheel to insure celerity in that regard, and two competent lookouts, experienced in the navigation of those waters, to insure close scrutiny of the many signals from vessels in the vicinity, and that the officer in charge should have been where he could have instant access to, and command of, the signals of the engineer. I think this much, at least, was absolutely necessary to answer the law requiring reasonable care and caution 449
under the circumstances.

It cannot be said that these omissions did not contribute to the collision. I think it quite clear from the proofs that they did.

1. According to the proofs, the propeller came within the sound of the barque's fog-horn when at least half a mile distant. Why was it not heard; or, if heard, why was it not distinguished from the other horns until the two vessels had arrived within such a fatal proximity that a collision was in- 450

evitable? It certainly cannot be attributed to the fog, because sound will travel as well in a fog as in a clear atmosphere, and, as is well known, is often intensified by it. It was unquestionably owing to the insufficiency of the lookout, both in number and in the competency of the one on duty. An additional lookout would at least have afforded another chance of escape. And when we take into consideration the fact, as shown by the proofs, that the lookout who was then on duty
31 451 was on his first trip on the lakes, although an old sailor on the ocean, and that he was confessedly unacquainted with the use of fog-horns, the necessity of an additional lookout assumes a vastly greater importance.

2. The want of a second man at the wheel made it necessary to call the lookout from his post before the necessity of a lookout forward had ceased to exist, as the exact position of the barque had not then been made out.

3. The propeller kept her headway just as much longer
31 452 than she would have done, if the mate had been at his post on the top of the pilot-house, as it took him to get there from where he was, which was several seconds. While the accident may not have been entirely avoided if this time had been saved, it certainly would have made the blow less severe.

4. I think, also, that reasonable care and caution was not exercised on the part of the propeller in regard to her speed.

The words "moderate speed" are used in article 16 in a specific and not in a general sense. It is moderate speed in a fog that is meant. Therefore, within the meaning of the
31 453 article, what would be moderate speed in a clear day or night is not necessarily such in a fog; and what would be moderate speed in a light fog, one in which objects can be seen at a considerable distance, would not be such in a dense fog in which objects can be seen at a less distance; "moderate speed," therefore, as used in article 16, is a relative term, and whether or not it be such must be determined, not by any certain, fixed number of miles per hour, but by the particular circumstances of each case in which the question arises. By what criterion,
31 454 then, shall the rate of speed be judged? The object and pur-

pose of the rule requiring moderate speed in a fog is to avoid collisions.

This object can be accomplished only by each steam vessel adopting such a rate of speed in a fog as will place her headway under such easy and ready command that she can be stopped within such distance as other vessels can be seen from her, on the assumption, however, in all cases, that such other vessels will do their full duty in apprising approaching vessels of their proximity. If the speed of a steam vessel in any 455
given case is greater than this it is too great, and in case of collision she must be held in fault, no matter what her rate of speed per hour actually is. It is believed that there is no other safe criterion by which the object of the rule can be insured.

This criterion, substantially, has been recently adopted and applied by both the circuit and district judges in the southern district of New York in three cases of considerable importance, and to which, to say the least, it applies with no greater force than to the present case. (See The Western Metropolis, 456
7 Blatchf., 214; The D. S. Gregory, 2 Ben., 166; The Louisiana, ibid, 371. See, also, McReady vs. Goldsmith, 18 How., 90, 91.)

The practical application of the rule above indicated certainly cannot be difficult in actual practice. A fog is never of sudden occurrence, or at least never so sudden as not to afford ample time for deliberation in regulating speed. The pilot of every steam vessel ought to know, and every competent pilot of course does know, practically, within what distance his vessel can be stopped at any given rate of speed. He 457
can also judge with practical certainty about how far off in any case in hand he can see another vessel in a fog. Here, then, he has all the data by which to regulate his speed with practical certainty, so as to ensure safety to his own and to other vessels.

Now, to apply the rule to the present case, the mate testifies that upon the first intimation he had of the proximity of the barque—and this, it must be remembered, was by hearing her fog-horn, and before she had yet been seen from the pro- 458

peller—he instantly, or as soon as he could get to where he could do so, signalled the engineer to stop. That on hearing the two horns, which was almost immediately after, he signalled the port engine to back. That immediately after this, and for the first time, the barque's green light was seen from the propeller, when he immediately signalled both engines to back. The engineer testifies that all these orders were promptly obeyed, and that both engines con-
31 459 tinued to back, and to back strong, strong up to the time the propeller struck the barque. Notwithstanding all this exertion, the speed of the propeller was still such when she reached the barque as to crush in her side, inflicting a serious and fatal injury, which shows that her speed must then have still been very considerable.

Under the rule above stated, therefore, the speed of the propeller was not that moderate speed meant by article 16, as applied to the circumstances of this case.

3 460 It will not avail the respondents anything to attempt to excuse the failure of the propeller to stop in time to avoid a collision by saying that those in charge of her did not learn of the barque's proximity and position in time to do so, because, as we have already seen, that excuse itself constitutes a fault.

The propeller, therefore, being in fault in each of the four particulars above specified, the defense of inevitable accident is not admissible.

It is true that the fogs which settle down upon the waters constitute one of the great—perhaps one of the greatest—perils
461 of navigation, especially upon those waters constituting, as in this case, great highways of commerce; and courts should, no doubt, deal leniently with vessels charged with fault in cases of collision where this great peril is a contributing cause, but not so leniently as to induce a letting down from that reasonable degree of care, caution and diligence due, in such circumstances, to the safety of life and property and the general interests of commerce.

In view of the importance which this case assumes, as well
462 in regard to the greatness of the calamity to the libellant in

the loss of his property, and the pecuniary loss to respondents, it held liable, as to the general interests of navigation and commerce in having the rules of navigation as well defined as is practicable—an importance which was fully realized and ably met by the exhaustive and instructive arguments of counsel on both sides—I have given the case my closest attention and scrutiny, and endeavored to apply to it the rules of law in such manner as not only to do simple justice between the parties and no more, but at the same time to inflict no injury, but perhaps to be of some service, to the interests of navigation 463
and commerce generally.

So applying these rules, however, I am clearly of opinion that there was such a letting down, on the part of the propeller, from that due and reasonable care, caution, and diligence above mentioned, as to constitute gross fault on her part, and on account of which she is responsible for the damages done by the collision complained of.

A decree must be entered in favor of libellant for the full amount of his damages resulting from the collision, and referring it to a commissioner to ascertain and report the same.
464

July 18, 1871. Interlocutory decree that libellant recover of the propeller and claimant the full amount of his damages, and that it be referred to the clerk to take proofs and ascertain the amount.

May 7, 1872. Final decree on Commissioner's report for $33,675.26.

June 5, 1872. Appeal in writing filed.

June 15, 1872. Appeal bond filed.

Afterwards, to wit, on the 20th day of December, A. D. 1872, said libellant came in court and filed amendments to his said libel in the words and figures following, to wit: 465

The Circuit Court of the United States for the Eastern District of Michigan. In Admiralty.

ELON W. HUDSON,
vs.
THE PROP. COLORADO.

And now comes the libellant. by Newberry, Pond & Brown, his proctors, and, by leave of the court first obtained, files the following amendments to his libel in the said cause :

466 1st. In the second article of the said libel erase the words "and as she came nearer," and insert in their place the following words : "as she approached so near that a collision became imminent, and at the same time."

2d. After the words "had not the proper lookout properly stationed," insert "was not constructed with proper facilities for signalling the engineer."

NEWBERRY, POND & BROWN.
Libellant's Proctors.

Filed in Clerk's office Dec. 20, 1872.

A. MANDELL, *Clerk.*

467 March 31, 1873. Decree of Circuit Court affirming decree of the District Court, and that libellant recover of claimants $35,987.19.

April 9, 1883. Appeal to Supreme Court filed.

SUPREME COURT

— OF THE —

UNITED STATES.

THE PROPELLER COLORADO,
CHARLES ENSIGN, AND
GEORGE W. HOLT,
Claimants, Appellants,
vs.
ELON W. HUDSON.

In the record as printed in this cause, the depositions of Patrick W. Nolan, Lincoln H. Erskine, and Joseph Wood, taken in another cause as appears at page 55 of the foregoing printed matter, used on the trial of this cause in the District and Circuit Courts as evidence produced on the part of the libellants, were omitted.

In this record as printed, mistakes in the original answer, and in other depositions used on the trials in Courts, and in the opinion of Judge Longyear, appear.

It has been concluded that these omissions and mistakes can be best corrected by printing together copies of such omitted depositions, and of said libel, answer, other depositions and opinion in which such mistakes occur.

It is therefore stipulated that the foregoing contains true copies of the depositions of the said Patrick W. Nolan, Lincoln H. Erskine and Joseph Wood, which were taken as and at the time in the foregoing printed matter stated; that the foregoing contains true copies of the original libel and answer in the cause, and of the depositions of Isaac D. Stedman, John Henderson, Neil McCollum, George Stedman, Bernard Carlin, Daniel McKinnon (incorrectly called Daniel Kinnon

or Daniel M. Kinnon in the record as printed), John B. Hall, Adam Haig, James N. Armstrong, Julius W. Brett and Charles Ensign, as used on such trials, and of the opinion of Judge Longyear, and that on the trial, hearing and argument of this cause in the Supreme Court of the United States the said depositions of Patrick W. Nolan, Lincoln H. Erskine and Joseph Wood shall be regarded as having been used as evidence as aforesaid, on the trials aforesaid, and as forming part of the record in this case; that the foregoing copies of the original libel and answer, and of the depositions of Isaac D. Stedman, John Henderson, Neil McCollum, George Stedman, Bernard Carlin, Daniel McKinnon, John B. Hall, Adam Haig, James N. Armstrong, Julius W. Brett and Charles Ensign shall be regarded as substituted for the copies of the said Libel and Answer, and of the depositions of said last mentioned witnesses and said opinion, as they appear in said printed record, and that said record, as printed, be regarded as corrected accordingly.

And it is further stipulated that the following errors exist in the original record as printed, and that the same may be corrected accordingly :

Fol. 210.—Strike out "$29,000" and insert "$27,000."

Fol. 215.—Strike out "lighter" and insert "higher."

Fol. 217.—Strike out "at the rate of $25,000" and insert "at the rate of $20,000."

Fol. 232.—Strike out "two cents," and insert "five cents."

Fol. 234.—Change "1854" to "1864; and change "1855" twice to "1865."

Fol. 249.—Strike out the word "think," and insert "know."

Fol. 268.—Strike out the words "seventy-three," and insert "seventy-two," it being agreed that said cause was heard in the Circuit Court on the 11th, 12th, and 13th days of December, A. D. 1872.

NEWBERRY, POND & BROWN,
Proctors for Libellant and Appellee.

MOORE & GRIFFIN,
Proctors for Respondents.

In the Supreme Court of the United States.

STATE OF FLORIDA, *vs.* EDWARD C. ANDERSON, JR., *et. als.*	ORIGINAL No. 8, IN EQUITY.

In the matter of the Petition of the Jacksonville, Pensacola and Mobile Railroad Company.

BRIEF OF COUNSEL FOR PETITIONER:

First. The Court will restore property taken by a receiver by its order when it is made apparent that the defendant against whom the receiver was appointed had no title, and that the petitioner was the true owner at the time of the seizure: This is done *ex debito justitia*. The petitioner asks not grace but demands its right. "No man shall be divested of his freehold but by the judgment of his peers or by the law of the land."

Second. Redress should be done at once and without directing a trial at law to settle the question of title, the Court can ascertain satisfactorily that the party petitioning is entitled, by an inspection of its own records.

Third. The Court cannot direct a trial at law to be had respecting defendants, Holland's title, without loss of time and consequent damage to petitioner and great expense, even if such proceeding is possible under the peculiar jurisdiction which the Court is exercising in this suit.

Fourth. All the facts which are alleged in the petition on which the title of petitioner depends are matters of record in this suit: they are either stated by Holland in his various answers filed in this Court, or in that of the State.

Holland states in his answer whence he derived his title; what estate he claims; he sets up the execution, the levy and the marshal's deed, (Holland's answer, page 134). The levy is recited by him in his petition to the Court, (Printed Record, page 245). He states in his answer that he claims a legal estate in the property, (pages 135, 137 Printed Record): he says "he claims and that he holds and has a good and sufficient legal title to the property" (p. 137).

Conant, the Marshal, in his answer recited the execution and levy, and stated the sale made under it. The decree in favor of Anderson & Co. is stated in the complaint and admitted to have been rendered (Holland's answer, Printed Record, pages 137, 138). Holland admits that the defendants, Anderson, *et. als.*, had obtained such decree, that the marshal was about to sell under it (see agreement pages 451-452, Printed Record). These agreements are admitted by Holland in his answer (Printed Record, page 142. Affidavit [illegible] 1043). Conant's [illegible] was made on the 21st of January, 1873. The levy of Holland's ex[illegible]

[illegible] on which [illegible] rests its application to have the property delivered to it, all those on which the title of Holland alone can be maintained, viz:- the judgment, execution, levy, deed of the marshal are before the Court. All are matters of record, nothing is matter *in pais* on which a jury could pass, they are triable by the Court by inspection of the record. There is no dispute as to what the records of the proceedings in the Circuit Court of the United States establishes or as to what was done by its officer.

Fifth. The questions which the Court is asked by the petitioner to hear and determine are matters of law. The petition admits Holland's judgment the issuance of the execution, its levy, the sale and the deed of the marshal to Holland. The petitioner however relies on other matters also of record, and upon them and upon those which appear on the face of Holland's judgment, and his deed, it is insisted that the levy and sale are illegal, that *they are in fact null and void.*

Sixth. The chief defect in Holland's title arises from the absence of all authority on the part of the marshal to sell under the execution.

1st. The judgment was rendered at common law, the writ of execution was a *fieri facias*, there were no proceedings such as the law of the State requires when an equity of redemption is sought to be sold under such execution. The law authorizes a levy and makes such equity [illegible] (Thompson's Digest, Laws Florida, pages 355, 356.

[illegible] to the Marshal or Commissioner of the Chancery [illegible] Holland [illegible] Court [illegible] possible [illegible] to that which the Equity Court by its decree undertook to sell.

The Court was the seller—it could not sell without jurisdiction of *the subject*—possession was necessary to such sale. The Court was bound to put its purchaser in possession. If Holland could levy on the property and sell it and take possession, the jurisdiction of the Court instantly was disturbed. There could not be two legal possessions, one in the Court of Equity, and one in an individual not a party or bound by its decree. When Holland levied, sold and took possession he acted adversely to the rights acquired by Anderson *et al* under their decree—he so expressly asserts—He disregarded the decree. If any one had

purchased at a sale under the Anderson Decree no doubt the Court would enforce its decree and aid the purchaser to get possession. Holland's purchase would be in such case treated as a nullity. If not, then Holland invalidated the decree and stripped the Court of the jurisdiction power over the property which it had when the decree was pronounced. If this is not to be allowed by the Court the levy and sale by Conant was a contempt. One who has possession or paper title through a sale made in contempt of a Court will not be permitted to assert it in any Court, so decided by this Court in Wiswalls vs. Sampson, 14 Howard, Rep. p. 64, a case where a party obtained a judgement which was by law a lien on land levy of execution sale and all took place after a State Court had appointed a Receiver over the road; it was held that the levy and sale was a contempt of the authority of the State Court and that the deed was *null and void.* It was argued that, the mere levy and sale did not disturb the possession of the Receiver; held otherwise.

Seventh. The law of the State of Florida which allows a sale of an Equity of redemption on execution forbids the delivery of personal property to a puchaser at such sale without bond is given for its forthcoming. Thompson Digest page 355. This was not done, a very large amount of moveable property was sold and delivered to Holland. The inventory furnished by the Receiver shows this (Printed record pages 407 to 431). This property is estimated at $134,000.

Eighth. When the justice of maintaining the possessionof the receiver is to be determined, the Court should see whether Holland should be treated by it as a bona fide possessor of the property, as one having a *prima facie* title. In case the allegations in the petition are found to be true, and the law has been correctly stated herein, whether the Court will keep property which it can only keep on the assumption that Holland's title is well founded in law and free from taint. The Court acted on Holland's possession and claim of title as *prima facie* it appeared when the order was made. Now that it appears that he has no title, or one that must disappear when the spear of justice touches it, that his possession is but an achievement of an astute attorney aided by a complaisant marshal, a victory over a crippled and embarrassed corporation, when the Court discovers this it will withdraw its hand and not touch what must defile.

The Supreme Court of the State of Florida has decided that Holland's title is null and void, that the property of the Company is not subject to sale under a writ of *feiri facias.* This is an end of the controversy.

If Holland did not acquire any right, title or interest in the property this Court did not have jurisdiction over the property when it directed its seizure. Not having jurisdiction of the property nor of the Corporation, the true and only legal owner, the Court cannot keep its Receiver in possession. It cannot make an order of any kind touching the property, save that which the Company now asks—an order of restitution.

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